THE CASE
OF
LORD HENRY SEYMOUR'S WILL
(WALLACE v. THE ATTORNEY-GENERAL)

F. W. GIBBS

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LES HOSPICES

DE

PARIS ET DE LONDRES.

"Les Hospices de Paris et de Londres."

THE CASE

OF

LORD HENRY SEYMOUR'S WILL

(WALLACE *v.* THE ATTORNEY-GENERAL).

REPORTED BY

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PREFACE.

THE Judgment of the Lords Justices in the case of *Wallace* v. *The Attorney-General*, delivered December 21, 1867, upon the meaning of the words, "*Hospices de Londres*," in the phrase, "*les Hospices de Paris et de Londres*," employed in the will of the late Lord Henry Seymour, was not reported in any of the Law Reports of that time, in consequence of the special character of the point decided. But it has been thought that the case, from its literary interest and the number of the parties affected by the decision, ought not to be left unreported; and having been one of the counsel in the case, I undertook to prepare a Report of it. The Report has grown under my hands, and its publication has been delayed beyond the time originally intended. I found that, to be complete, it ought to be expanded so as to contain an account of the proceedings in France, the country of principal administration of the estate of the testator, and a notice of a claim to which the *Hospices de Paris et de Londres* have succeeded under his will to a share in an Italian property

called the Fagnani succession, and that for this purpose it was necessary to procure the French official reports of the administration and the Italian documents relative to the claim. This claim to a share in the Fagnani succession remains undecided. But as the litigation respecting the succession began more than thirty-five years ago, I have thought it better not to wait for a decision, but simply to explain the claim.

I have to acknowledge my obligations to the Honourable Arthur Romilly for the manuscript of the Judgment of his father, Lord Romilly, the Master of the Rolls, of November 3, 1865, set out in the Report; and also to Mr. W. A. Greatorex for the official reports of the proceedings in France, and for his four reports upon those proceedings, as well as for procuring for me the Italian documents. Mr. W. A. Greatorex was appointed by the Master of the Rolls, January 30, 1867, "the solicitor to represent in the case of *Wallace* v. *The Attorney-General* the several charities who had been admitted as entitled to share in the residuary personal estate of the testator in the cause under the denomination of *Hospices de Londres*," and in that capacity he drew up his reports above mentioned for the information of those charities. His duties involved personal communication in Paris with M. de la Palme, the notary appointed by the French Tribunal to represent the *Hospices de Londres*, as well as a careful study of the French official reports; and it is due both to the *Hospices de Londres* and to Mr.

Greatorex to say that at a meeting of the solicitors for the admitted London charities, "*les Hospices de Londres*," held March 20, 1873, "the warmest thanks of the meeting" were given to Mr. Greatorex "for his zealous and successful services for the benefit of the charities."

I ought to add, after reading the French official reports, that the *Hospices de Londres* are indebted to M. de la Palme for the diligence and ability he has shown in the protection of their interests in the proceedings in France.

F. W. G.

2 HARCOURT BUILDINGS, TEMPLE,
June 1877.

CONTENTS.

THE CASE

OF

LORD HENRY SEYMOUR'S WILL

(WALLACE *v.* THE ATTORNEY-GENERAL).

THE following Report of "The Case of Lord Henry Seymour's Will" contains an account of the administration of the estate of the late Lord Henry Seymour by the Courts of France and of England, and more particularly the decisions of those Courts upon the questions that arose out of the disposition which gave the chief interest to his will—the universal legacy to the *Hospices de Paris et de Londres.*

This universal legacy was in these words:—

"*Je donne et lègue tous les objets et valeurs dont je n'ai pas disposé ci-dessus aux Hospices de Paris et de Londres, que j'institue à cet effet mes légataires universels.*"

The testator, the Right Honourable Henry Seymour Conway, commonly called Lord Henry Seymour, brother of the fourth Marquis of Hertford, was born in France in 1805. He resided all his life in France, and died in his own house at Paris, August 16, 1859. Thus he had a French domicile. France, therefore, was the country to whose Courts belonged the principal administration of his estate, and his will was brought before the Court of Chancery here by Mr. Wallace, now Sir Richard Wallace, Bart., one of the executors, in aid of the French administration.

The universal legacy gave rise to two questions decided here by the Court of Chancery in the suit mentioned on the title-page of *Wallace* v. *The Attorney-General*:—1st, what was the extent,

topographically, of the word "London" as used by the testator; and, 2ndly, what Institutions were included within the description, "*les hospices de Londres.*"

Before reporting, however, the proceedings in our Courts, it will be necessary to set out some passages of the will, and to state the course of administration in France.

Between 1855 and the time of his death in 1859, Lord Henry Seymour made twenty-one testamentary writings, all of them in French and holograph. These testamentary writings contained a number of specific legacies; some of them legacies to friends of particular objects, others legacies of sums of money, and others legacies of annuities. Among the last were five legacies of annuities or usufruct, amounting to 17,000 francs per annum, unaccompanied by any disposition as to the *nue propriété* of the capital necessary to secure the annuities or usufruct. These legacies will be noticed later. With this exception, it will be sufficient for the purpose of this Report, and with the view of explaining the position of the universal legatees under French law, to state the fact that such specific legacies were made by the testator, and to set out only those parts of the testamentary writings which contain the universal legacy, or gave rise to questions in the French Courts between the two universal legatees.

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1. EXTRACT FROM THE WILL OF JUNE 19, 1856.

"*Je donne et lègue à M^lle^ Sophie Chéneau, à condition qu'elle ne se mariera pas, l'usufruit, sa vie durant, de la somme nécessaire pour lui assurer un revenu de dix mille francs par an. Cette somme sera employée en acquisition d'une rente sur l'État français qui sera immatriculée au nom de M^lle^ Sophie Chéneau pour l'usufruit, et pour la nue propriété au nom de l'Administration des Hospices de Paris auxquels je fais don et legs de la nue propriété de cette somme; si la dite demoiselle jugeait à propos de se marier, l'usufruit que je viens de lui léguer cesserait de plein droit, à partir du jour de son mariage.*" * * *

"*Je donne et lègue à M^lle^ Ellen Minchin, à condition qu'elle ne se mariera pas, l'usufruit, sa vie durant, de la somme nécessaire pour lui*

assurer un revenu de dix mille francs par an. La nue propriété de cette somme appartiendra à l'Hospice des Lunatics de Londres auquel je fais don et legs." * * *

"Je donne et lègue à Mr. Richard Wallace l'usufruit incessible et insaisissable de la somme nécessaire pour lui assurer un revenu annuel de douze mille francs, qui lui sera payé de trois en trois mois, à compter du jour de mon décès. Je donne et lègue la nue propriété de cette somme à l'Hospice des Petits-Ménages." * * *

"Je donne et lègue tous les objets et valeurs dont je n'ai pas disposé ci-dessus aux Hospices de Paris et de Londres, que j'institue à cet effet pour mes légataires universels. Tous les droits de mutation et autres auxquels pourront donner ouverture les legs particuliers contenus au présent testament seront supportés par ma succession seule." * * *

"Je nomme mes exécuteurs testamentaires avec saisine, en France, MM. Paul Julien, Amédée Lucas et Micard, à défaut de ces trois personnes, mon notaire à Paris, ou si je n'en ai pas, le Président de la Chambre des Notaires de Paris; en Angleterre, Frédéric Seymour et Edgar Disney, et à leur défaut, Mr. G. Capron, mon notaire à Londres, ou à son défaut son successeur.

"Fait à Paris ce dix-neuf juin mil huit cent cinquante-six.

"Signé H. SEYMOUR."

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2. EXTRACT FROM THE WILL OF JUNE 22, 1858.

"Je donne et lègue à M^lle Sophie Chéneau, à condition qu'elle ne se mariera pas, l'usufruit, sa vie durant, de la somme nécessaire pour lui assurer un revenu de dix mille francs par an. Cette somme sera employée en acquisition d'une rente sur l'État français, qui sera immatriculée au nom de M^lle Sophie Chéneau pour l'usufruit, et pour la nue propriété au nom des Hospices de Paris, auxquels je fais don et legs de la nue propriéte de cette somme; si la dite demoiselle jugeait à propos de se marier, l'usufruit que je viens de lui léguer cesserait de plein droit, à partir du jour de son mariage." * * *

"Je donne et lègue à M^lle Ellen Minchin, à condition qu'elle ne se mariera pas, l'usufruit, sa vie durant, de la somme nécessaire pour lui assurer un revenu de dix mille francs par an. La nue propriété de

cette somme appartiendra à l'hospice (indiqué dans les testaments antérieurs) de Londres auquel j'en fais don et legs; si la dite demoiselle venait à se marier, l'usufruit que je viens de lui léguer cesserait de plein droit, à compter du jour de son mariage." * * *

"*Je donne et lègue à Mr. Richard Wallace l'usufruit incessible et insaisissable de la somme nécessaire pour lui assurer un revenu annuel de douze mille francs, qui lui sera payé de trois mois en trois mois, à compter du jour de mon décès. Je donne et lègue la nue propriété de cette somme à l'Hospice des Petits-Ménages de Paris pour y fonder des lits.*" * * *

"*Je donne et lègue tous les objets et valeurs dont je n'ai pas disposé ci-dessus aux hospices de Paris et de Londres que j'institue à cet effet pour mes légataires universels.*

"*Tous les droits de mutation et autres auxquels pourront donner ouverture les legs particuliers contenus au présent testament seront supportés par ma succession seule.*" * * *

"*Je nomme pour mes exécuteurs testamentaires avec saisine, en France, MM. Paul Julien, Amédée Lucas et Micard, à défaut de ces trois personnes, mon notaire à Paris, et si je n'avais pas de notaire à Paris, le Président de la Chambre des Notaires de Paris; en Angleterre, Richard Wallace et Edgar Disney, ou à leur défaut, Mr. Capron, mon notaire à Londres, ou à son défaut son successeur.*

"*Fait à Paris ce vingt-deux juin mil huit cent cinquante-huit.*

"*Signé* H. SEYMOUR."

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3. CODICIL OF JUNE 22, 1858.

"*Je reduis à deux mille quatre cents francs l'usufruit que j'ai par mon testament laissé à M^lle^ Sophie Chéneau, en laissant subsister les mêmes conditions imposées à ce legs en usufruit.*

"*Je maintiens le legs universel que j'ai fait aux hospices de Londres et de Paris, mais j'exige comme condition de ce legs en ce qui concerne les hospices de Paris que ce qu'ils recueilleront de ma succession soit employé en acquisition d'immeubles qui seront inaliénables.*" * * *

"*Fait à Paris ce vingt-deux juin mil huit cent cinquante-huit.*

"*Signé* H. SEYMOUR."

4. CODICIL OF OCTOBER 27, 1858.

"*J'annule la rente viagère de deux mille quatre cents francs que j'ai laissée à Mademoiselle Sophie Chéneau.*"

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5. CODICIL OF JULY 19, 1859.

"*Quant à la demoiselle Sophie Chéneau, j'annule tout ce que j'ai pu faire en sa faveur.*"

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6. To these passages must be added the directions left by the testator for the maintenance of his favourite horses, contained in Codicils of June 21 and June 22, 1856, and June 22, 1858:—

"*Je veux que les chevaux qui sont connus par mes amis pour être mes chevaux de prédilection soient mis en pension dans un endroit où ils seront exempts de tout travail et bien soignés; mon chef d'écurie pourra renseigner mes amis pour qu'ils puissent remplir mes intentions. J'affecte sur les biens que je laisserai le revenu suffisant pour qu'il soit pourvu largement au prix de la pension.*"

The *Hospices de Paris*, the Institutions thus made universal legatees jointly with the *Hospices de Londres*, are under the government of a Board styled "*L'Administration de l'Assistance publique à Paris.*" (1) This Board manages the external relations and the internal affairs of the charitable Institutions (*établissemens hospitaliers*) of the city of Paris, and its director represents them in all legal proceedings.

At the testator's death the Board had under its management twenty-six charitable Institutions, which it had arranged in three classes:—

1. Fifteen *Hôpitaux*, or hospitals for the gratuitous reception of the sick.

2. Eight *Hospices*, or asylums for the gratuitous reception of the aged and incurable.

3. Three *Maisons de retraite*, Institutions in which the inmates were received on payment of a small sum.

(1) *Loi du* 10–13 *janvier* 1849, *relative à l'organisation de l'assistance publique à Paris: Les Codes*, par Tripier, p. 1426.

To this last class belonged the *Hospice des Petits-Ménages*, mentioned in the testator's wills of June 19, 1856, and June 22, 1858. It was situated *Rue de la Chaise*, No. 28, and admitted aged poor, either married couples or widowed persons, on a small payment. A principal condition of admission was that the united ages of the married couple should not be less than 130, and the age of the widowed person not less than 60 years. (1)

The history and administrative arrangements of this Board and the classification of the Institutions adopted by it became, as will be seen, one of the chief subjects of discussion in our Courts.

Mr. Capron, described by the testator as "*mon notaire à Londres*," had his office in Savile Place, in the parish of St. James, Westminster.

The first step in the administration in France of an estate under a holograph will is for the person in possession of the will at the death of the testator to present it to the President of the Tribunal of First Instance of the arrondissement in which the succession opens, for him to draw up a Minute of the presentment, the opening, and the state of the will, and to make an Ordinance depositing it in the custody of a notary selected by him. (2) This provision is founded on the private nature of a holograph will, as contrasted with the most solemn form of will in French law, the *testament par acte public*, which is received by two notaries in the presence of two witnesses, or one notary in the presence of four witnesses, (3) and is consequently held authentic, is at once in legal custody and accessible after the death of the testator to the parties interested under it, and admits of being put in execution. In all these respects a holograph will, as an *acte sous seing privé*, is wanting. The Ordinance of the President is

(1) *Annuaire et Almanach du Commerce, de l'Industrie, de la Magistrature et de l'Administration*; 1857; Paris.

(2) *Code civil*, Art. 1007. "*Tout testament olographe sera, avant d'être mis à exécution, présenté au président du tribunal de première instance de l'arrondissement dans lequel la succession est ouverte. Ce testament sera ouvert, s'il est cacheté. Le président dressera procès-verbal de la présentation, de l'ouverture et de l'état du testament, dont il ordonnera le dépôt entre les mains du notaire par lui commis.*"

(3) *Code civil*, Art. 971.

intended to supply in part these deficiencies. It is an act of voluntary jurisdiction, and leaves untouched questions as to the validity of the will; (1) but it transfers the will from private to legal custody, thus rendering it accessible to parties interested, either in attacking it as heirs or claiming under it as legatees.

On the death of Lord Henry Seymour the twenty-one testamentary writings already mentioned were presented to the President of the Tribunal of the Seine by M. Daguin, the notary to whom they had been intrusted by the testator, and were duly deposited by Ordinances of August 16 and 17, 1859, in the custody of M. Daguin.

The President of the Tribunal also appointed a notary to represent absent parties, and in particular the *Hospices de Londres*, in the next proceedings, the removal of seals and the making of an inventory of the estate; (2) and upon the request of this notary and of the Director of the *Administration de l'Assistance publique à Paris*, as representing the *Hospices de Paris*, and of other parties interested in the succession, M. Daguin and M. Desprez, another notary, proceeded to make an inventory of the testator's estate.

The estate, which was very large, comprised immoveable and moveable property, both in France and in England. The English property included freehold and leasehold property, and £72,483 Three per Cent. Bank Annuities. And besides the property in France and in England, there was a claim, which had become vested in Lord Henry Seymour, to a share in an Italian property called the Fagnani succession. The claim to this share is still in litigation in the Italian Courts.

Lord Henry Seymour died without heirs to whom a portion of his property was reserved by French law, and in consequence the *Hospices de Paris et de Londres*, as the universal legatees under his will, became seised in full right by his death of all the property of the succession. The subsequent steps of the adminis-

(1) Demolombe, *Traité des Donations entre Vifs et des Testaments*, iv. p. 436, Nos. 493, 494, 498, 499; p. 441, No. 502.

(2) *Code de Procédure civile*, 928. "*Si les parties qui ont droit d'assister à la levée ne sont pas présentes, il sera appelé pour elles, tant à la levée qu'à l'inventaire, un notaire nommé d'office par le président.*"

tration depend upon their legal position, and will best be understood by reference to the following articles of the Civil Code which regulate that position :—

"1004. *Lorsqu'au décès du testateur il y a des héritiers auxquels une quotité de ses biens est réservée par la loi, les héritiers sont saisis de plein droit par sa mort de tous les biens de la succession ; et le légataire universel est tenu de leur demander la délivrance des biens compris dans le testament.*"

"1006. *Lorsqu'au décès du testateur il n'y aura pas d'héritiers auxquels une quotité de ses biens soit réservée par la loi, le légataire universel sera saisi de plein droit par la mort du testateur sans être tenu de demander la délivrance.*"

"1008. *Dans le cas de l'article* 1006, *si le testament est olographe, le légataire universel sera tenu de se faire envoyer en possession par une ordonnance du président mise au bas d'une requête à laquelle sera joint l'acte de dépôt.*"

The result of these articles as applied to the present case may be thus stated. Where on the death of a testator there are heirs to whom a portion of his property is reserved by law, these heirs are seised in full right by his death of all the property of the succession, and the universal legatee is bound to demand from them the delivery of the property comprised in the will. Where, however, as in this case, there are no such heirs, the universal legatee is seised in full right by the death of the testator without being bound to demand delivery. And if this universal legatee is instituted by a will *par acte public*, the solemnity of the instrument renders unnecessary further judicial proceeding. But where, as again in this case, the universal legatee is instituted by a holograph will, he is not allowed to enter into possession at once, but has to cause himself to be put in possession by an Ordinance of the President of the Tribunal. It has been already noticed that a holograph will is wanting in executory force; and in this case, where the heir is ousted by the universal legatee under the will, the legislature considered that the universal legatee should not be allowed to enter into possession till an Ordinance of the President gave the will executory force. "This Ordinance," M. Demolombe says in his Commentary on these articles, "is a sort of *visa* and *pareatis*, of which the object is to

place the universal legatee instituted by a holograph will in the same position as the universal legatee instituted by a public will, and to authorise him to exercise in virtue of his legal seisin, seisin in fact, that is to say, to take actual possession of the succession." (1) Seisin carries with it the obligation of discharging all the liabilities of the succession, according to Article 724: "*Les héritiers légataires sont saisis de plein droit des biens droits et actions du défunt, sous l'obligation d'acquitter toutes les charges de la succession.*" And as the seisin of the heirs is transferred to the universal legatee, the particular legatees have to demand of him, and he becomes responsible to them for, the delivery of their legacies. (2)

These provisions are intelligible only if their history is looked at. The jurisprudence of the Civil Code is framed out of the two systems of jurisprudence in France before the promulgation of the Code—the jurisprudence of the provinces under the *droit coûtumier*, the Customs, and the jurisprudence of the provinces under the *droit écrit*, Roman law; and the position assigned by the Code to the universal legatee was a compromise between these two systems. (3)

The position of the heir under the old French law was expressed in the maxim found in almost all the Customs, "*Le mort saisit le vif son hoir.*" This seisin of the heir was a legal fiction, the origin of which is traced by modern French writers back to the usages of the German tribes, one of the elements of the Customs. These usages, it is said, admitted the presumption that, at the moment of the death of a member of a family, his nearest relatives were acknowledged by and received seisin of his property from the community to which he belonged, and thus a suspension of seisin was prevented, and an interruption of the rights and duties attached to the property. This succession of the heir without actual livery of seisin was retained under the Feudal System, and formed the exception to the rule that seisin must be obtained from the Lord upon a transfer of possession. But as, according to the ideas

(1) Demolombe, *Traité des Donations entre Vifs et des Testaments*, iv. No. 504.

(2) *Code civil*, 1014, 1011.

(3) "*Une sorte de transaction.*"—Demolombe.

of the age, transfer of possession was inseparably connected with livery of seisin, the fiction was introduced that livery of seisin was made by the ancestor at death, and the maxim was framed, "*Le mort saisit le vif.*" The maxim, once framed, was logically interpreted by French lawyers, and they held that the continuity of seisin was such that it could not be done away with by a testator alone in favour of his legatees, but that, as a legacy was something withdrawn from the succession, the concurrence of the heir to the succession was necessary to the withdrawal, and that from his hands the legatees must receive their legacies. Now the Customs recognised only heirs in blood, and did not allow of the institution of a testamentary heir. Hence every one taking under a will, whether as a particular or universal legatee, was bound to demand delivery of his legacy from the heirs.

So deeply rooted was this hereditary seisin in French law that it was adopted in the provinces of the *droit écrit.* But it was applied with a difference. Those provinces following Roman law allowed of the institution of a testamentary heir. This testamentary heir, on the death of his testator, became seised of the succession, and not only legatees, but also heirs to whom a portion was reserved by law, were obliged to come to him to obtain their legacies or their legal portion.

The Code combined the two systems. It preserved in Article 724, quoted above, the seisin of the heirs, enacting it by law, and not leaving it to be founded on a fiction. Where there were heirs to whom a portion of the succession was reserved by law, together with an universal legatee, the title of the heirs derived from the law being higher than that of the universal legatee derived from the will of the testator, the Code gave the seisin to the heirs, following the principle of the Customs. But it did not go to the full extent of the Customs; for where there were no such heirs, it gave seisin to the universal legatee, thus introducing the testamentary heir of the *droit écrit.* Still, in protection of the hereditary principle, it required him to have a legal title to possession; and where the testator had not provided such a title by a will *par acte public,* but had instituted him by a holograph or secret will, it required him to obtain possession judicially from the

President of the Tribunal to whose jurisdiction the succession belonged. (1)

In his wills of June 19, 1856, and of June 22, 1858, Lord Henry Seymour appointed "testamentary executors with seisin." The duty of testamentary executors under French law is to see to the faithful execution of the will—"*ils veilleront à ce que le testament soit exécuté*"—and it is competent to the testator to give or not to give them seisin. But where, as in this case, seisin is given, it is by law confined to moveables, and limited in duration to a year. It is the right to take possession of the moveables of the succession without a judgment or legal demand. It differs from, and coexists with, the seisin of the heir, and does not affect his responsibility to legatees as the true possessor of the succession. Hence testamentary executors cannot safely make delivery of legacies without the consent of the heir, or, as in this case, of the universal legatee, except under an Ordinance of the Tribunal. (2) This remark will explain the next step in the administration.

The inventory was completed December 3, 1859, and thereupon the testamentary executors obtained from the President of the Tribunal an *Ordonnance de Referé* of December 8, 1859—an Ordinance made in cases of urgency, to be executed provisionally, without prejudice to the rights of the universal legatees—authorising the executors to deliver to the particular legatees the specific objects bequeathed to them, in respect of which there was no contest. (3)

From the explanation thus given, it will be seen that it was incumbent on the *Hospices de Londres* and the *Hospices de Paris* to apply to the President of the Civil Tribunal of the Seine to be put in possession of the universal legacy. But as up to this time no Institution in London had appeared before the French Courts, the testamentary executors presented a petition to the *Chambre du Conseil* of the Tribunal to nominate a representative of the

(1) Demolombe, *Traité des Donations entre Vifs et des Testaments*, iv. p. 506, No. 551; p. 568, No. 615. *Traité des Successions*, i. p. 156, No. 125. Pothier, *Des Successions*, chap. iii. sect. ii. Rolland de Villargues, *Dict. du Droit civil*, sub voc. "*Délivrance de Legs.*"

(2) *Code civil*, 1025, 1026, 1031. Demolombe, *Traité des Donations*, &c., v. pp. 37, 47, 57, Nos. 45, 56, 61. Rolland de Villargues, *Dict.* sub voc. "*Exécuteur testamentaire.*"

(3) *Code de Procédure civile*, 806, 809.

Hospices de Londres; and the *Chambre du Conseil*, by a judgment of January 18, 1860, by application of Article 113 of the Civil Code, which provides for the appointment of a notary to represent absent parties; (1) appointed M. Daguin to represent the *Hospices de Londres* in the "account, liquidation, and partition" ("*comptes, liquidation et partage*") of the succession of Lord Henry Seymour, and authorised him to perform all conservatory acts, to demand to be put in possession, to defend claims for delivery of legacies, to consent to or contest delivery, to make all demands for partition and for the sale of immoveables, to defend all demands made for these purposes, to pay special legacies, &c. And in conformity with Article 1008 of the Code, set out above, by an Ordinance of the President, M. Daguin was put in possession of the universal legacy made to the *Hospices de Londres*.

Subsequently an Institution in London, the Hospital for Poor French Protestants and their Descendants, applied to and obtained from the President of the Tribunal an ordinance of August 18, 1860, putting the Institution in respect of the share falling to it in possession of the universal legacy. Still later another Institution, the House of Charity, Soho Square, made a similar application, with a similar result; but as the interest of these Institutions was protected by the notary appointed by the Tribunal on behalf of the *Hospices de Londres*, they were not summoned to take an active part in the proceedings.

M. Daguin died in January 1861, and the *Chambre du Conseil* appointed M. Émile de la Palme his successor, with the same powers. He has continued to act throughout, and is styled in the French documents *Notaire administrateur*.

By another Ordinance of the President, of February 21, 1861, M. Husson, the Director of the *Administration de l'Assistance publique à Paris*, as representing the *Hospices de Paris*, having been authorised by an *arrêté* of the Prefect of the Seine to accept the legacy—an authorisation required by French administrative law—was also, in conformity with Article 1008 of the Code, put in possession of the universal legacy made to the *Hospices de Paris*.

(1) *Code civil*, 113. "*Le tribunal, à la requête de la partie la plus diligente, commettra un notaire pour représenter les présumés absents dans les inventaires, comptes, partages et liquidations dans lesquels ils seront intéressés.*"

Representatives of the universal legatees having been thus duly constituted, at their suit and at the suit of other parties interested in the succession, the Tribunal pronounced a Judgment of July 31, 1861, by which it ordered that at the suit and instance of M. de la Palme in his aforesaid quality, and in presence of the other parties, or after due summons of them, the "account, liquidation, and partition" of the succession should be proceeded with before M. Desprez, notary, appointed by the Tribunal for this purpose, and nominated M. Nicolas, one of the Judges of the Tribunal, to report upon the homologation thereof; and stating that after this partition it would be necessary to proceed to a sub-partition among the *Hospices de Londres* of their share of the universal legacy, appointed for the purpose M. Desprez and the Judge already named, and reserved in regard to this sub-partition all the rights of the Institutions of London which had not yet applied, and specially abstained from giving Judgment upon the motion of the Hospital for Poor French Protestants made with the view of bringing in the Institutions which had not yet come forward. (1)

M. Desprez, who is styled *Notaire liquidateur*, at once commenced proceedings in execution of this judgment. These proceedings have not yet been closed, and before calling attention to them, it will be convenient to set out the proceedings in the English Courts. It is, however, necessary first to state that of the twenty-one testamentary writings already mentioned as made by Lord Henry Seymour, three were invalid. By Article 970 of the Civil Code, a holograph will is not valid unless it is wholly written, dated, and signed by the testator. "*Le testament olographe ne sera pas valable s'il n'est écrit en entier, daté et signé de la main du testateur ; il n'est assujetti à aucune autre forme.*" Two of the writings were not dated, though signed, by the testator; and the third was neither dated nor signed by him. Nothing, however, turns upon these three so far as this report is concerned. The other eighteen writings, of which the passages quoted above formed part, fulfilled the requirements of the law.

On April 29, 1863, Mr. Wallace, in his capacity of executor in England, his co-executor having renounced, obtained probate of

(1) Appendix A.

the eighteen valid testamentary writings, and then commenced a suit in the Court of Chancery, before the Master of the Rolls, Lord Romilly, for the administration of the estate in England.

WALLACE *v.* THE ATTORNEY-GENERAL.

The Bill in the suit was filed against the Attorney-General by reason of the charitable bequest in the will; against the late Marquis of Hertford, the brother of the deceased, as his heir-at-law and sole next-of-kin; and against M. Émile de la Palme, at his own instance, on the ground that the domicile of the testator was French, and that he was in the nature of administrator-general of the estate of the testator. It contained notarial translations of the testamentary papers, and a summary of the proceedings in the French Courts, set out above; and prayed, among other things, that the personal estate of the testator in England might be duly administered by the Court; that it might be ascertained who was entitled to the real and leasehold property of the testator; and that the inquiries necessary for the administration might be made.

Accordingly, the Master of the Rolls made a decree, dated July 25, 1863, ordering, among other things, an inquiry by his chief clerk, Mr. Hume, as to what was the effect according to the law of France of the residuary bequest by the testator "*aux Hospices de Paris et de Londres*"; and what Institutions or persons were, according to the law of France, meant by the word *Hospices*; and what Institutions or persons were entitled in France and England to the residuary bequest contained in the will; and what Institution was meant by the *Hospice des Lunatics de Londres.*

During the course of this inquiry, a large number of Institutions brought in claims to be included among the *Hospices de Londres*; and the Master of the Rolls directed that the limits of London as intended by the bequest should be argued before him by four of the Institutions, selected to represent the respective districts in which they were situated. St. Bartholomew's Hospital represented the City of London, being the only hospital within the City; St. George's Hospital was selected to represent the cities and liberties of London and Westminster; University

College, the Metropolitan Boroughs; and the Brompton Consumption Hospital, the Registrar-General's district.

Upon the argument:—

Mr. *Selwyn*, Q.C., and Mr. *F. J. Wood* appeared for University College Hospital.

Mr. *Southgate*, Q.C., and Mr. *R. Hawkins*, for St. George's Hospital.

Mr. *De Gex* and Mr. *W. W. Streeten*, for the Brompton Consumption Hospital.

Mr. *Hobhouse*, Q.C., and Mr. *H. R. V. Johnson*, for St. Bartholomew's Hospital.

Mr. *Ware*, for other claimants.

Mr. *Baggallay*, Q.C., and Mr. *Schomberg*, for the Plaintiff.

Mr. *Wickens*, for the Attorney-General.

The following various limits of London, as defined at different times and for different purposes, were submitted to the Court, viz.:—1. The London postal district, which is a circuit of twelve miles from the Post Office. 2. The Metropolitan police district, a circuit of fifteen miles from Scotland Yard, and the whole of any parish any part of which is within the circle. 3. The London cab radius, being four miles from Charing Cross. 4. The Metropolitan Parliamentary Boroughs. 5. The cities and liberties of London and Westminster. 6. The (old) Bills of Mortality, now superseded by the Registrar-General's district. 7. The Metropolitan district under the Poor Law Amendment Act. 8. The London district comprised in the weekly return of the Registrar-General. 9. The district covered by the population of London returned under the Government census. 10. The district comprised within the Metropolis Local Management Act, which is the same as the last three, with the exception of the addition of Penge.

The authorities referred to were:—

Beckford v. *Crutwell* (5 C. & P. 242; S. C. 1 Moo. & R. 187).

Ditcham v. *Chivis* (4 Bing. 706).

Mallan v. *May* (13 M. & W. 511).

Elliott v. *The South Devon Railway Company* (2 Exch. R. 725).

Burbige v. *Jakes* (1 Bos. & P. 225).

Le Roy v. *Lewen* (1 Sid. 405).

15 & 16 Vict. c. 84 (the Metropolis Water Act, 1852); 16 & 17 Vict. c. 33 (Metropolitan Hackney Carriages Act); 18 & 19 Vict. c. 122 (the Metropolitan Building Act, 1855); 23 & 24 Vict. c. 125 (the Metropolis Gas Act, 1860); and Sir William Petty, as quoted in Stowe's *Survey of London* (edit. 1754), p. 3:—"What is meant by London?—By the city of London we mean the housing within the walls of the old city with the liberties thereof, Westminster, the borough of Southwark, and so much of the built ground in Middlesex and Surrey where houses are contiguous unto or within call of those before mentioned."

On February 11, 1864, the MASTER OF THE ROLLS delivered the following Judgment:—

The question that I have to determine upon this summons is the extent, topographically, of the word "London" employed by the testator in his will. The will is written in French, and by it he gives all the residue of his estate to the hospitals of Paris and of London. The words in the original will are, "*aux Hospices de Paris et de Londres.*" I have not, on this summons, to deal with or consider the extent or effect of the word "*Hospices.*" All that I have to consider is what is included in the words "*Hospices de Londres,*" which are properly translated "hospitals of London," as used by the testator in his will.

Four claimants have been selected to argue for different classes of hospitals. One is confined to the City of London, strictly and technically so called; another extends to the limits of the old Bills of Mortality, which were discontinued in the year 1847; a third claim extends to the limits of what are usually called the Metropolitan boroughs; and the fourth extends to the limits included in the Registrar-General's return.

There are, I think, insuperable objections to the adoption of any one of these proposed limits. As regards the City of London proper, it is argued with great force that the limit of the City of London proper affords a safe and intelligible limit, easy to be carried into effect, and admitting of no ambiguity, and that if the Court proceeds beyond this, it is impossible to draw a line and say that "London" begins or ends on any particular spot.

Several cases have been cited to show that this has been the

governing principle in several decisions. In one of these (*Le Roy* v. *Lewen*, 1 Siderfin, 405), a man was convicted of perjury for having sworn that a particular person was in London when in truth he was in Southwark. In another (*Mallan* v. *May*, 13 M. & W. 511), a man who covenanted not to carry on business as a dentist in London was held not to have broken his covenant by carrying on that business in Great Russell Street, Bloomsbury. But whatever may be thought of these decisions—the former of which, I think, would scarcely be followed in the present day—it is clear that the testator in this case did not use the word in any technical or restricted sense in this will, for he speaks of Mr. Capron, his solicitor, as residing "*à Londres*," and the evidence shows that neither Mr. Capron's residence nor his office is situated within the limits of the City of London. It is obvious that the testator uses the word "London" in the ordinary and popular sense in which persons are said to reside in London, and in which sense the City, the borough of Southwark, and the city of Westminster, and many of the adjoining places, are considered as forming part of the great metropolis of London.

I have no hesitation, therefore, in coming to the conclusion that the words of the will do not confine the gift to hospitals within the boundaries of the City of London properly so called.

When I have arrived at this conclusion, I feel to the fullest extent the difficulties which induced the Court, in the cases I have referred to, to confine the terms to the narrowest limits, and I admit that no one of the other limits proposed by the three other classes, and which I have stated, can be allowed to be the proper extent and limit of the word "London" as used by the testator.

The Bills of Mortality present insuperable difficulties as a limit. They were fixed in the time of Charles the Second, and they were discontinued at the close of the year 1847. They include only entire parishes, and not parts of parishes. They exclude the whole of Marylebone and the whole of St. Pancras, whilst, in ordinary parlance, these parishes have long since formed, and do now form, part of the great metropolis of London. It would be, in my opinion, preposterous and purely arbitrary to draw a line through such a street as Gower Street, and to determine that one

house in it was in London and the adjoining house, separated merely by a party-wall, was not in London. Yet such would be the result of taking the limit of the old Bills of Mortality as a test for the limits of London.

The proposal to adopt the boundaries of the so-called Metropolitan Boroughs would be just as arbitrary and as objectionable. By it large agricultural districts in the neighbourhood of London would be included in such limits, while the closely built and thickly inhabited parts of Brompton and Kensington immediately adjoining the city of Westminster would be excluded.

Still less could I adopt the limits included in the Registrar-General's return, which includes Plumstead, Eltham and Woolwich, in Kent, Greenwich, Sydenham, Putney, Streatham, and many other similar places. Not even in the widest scope of the popular sense of the term "London" could persons residing at Plumstead or Woolwich be said to be residing in London.

I have had various other boundaries suggested to me, but they are all equally unsatisfactory. The boundaries of the cities of London and Westminster would be too limited; the limits of the Metropolitan Post Office delivery would be too large; and, in truth, I have come to the conclusion that an accurate definition of the extent of the limits of the metropolis of London properly so called is not capable of being made, and, accordingly, in none of the cases cited to me has it been attempted, except where the strict and technical limit of the City of London proper has been adopted, which technical meaning has, as I have already stated my opinion to be, been excluded by the testator himself.

I am therefore driven to adopt a course which, in truth, has been adopted by the learned Judges who, in the case of *Ditcham* v. *Chivis* (4 Bing. 706), and in *Beckford* v. *Crutwell* (5 C. & P. 242; 1 Moo. & R. 187), both of which were cited to me, decided that the word "London" was *nomen collectivum*, and that it was not to be confined to the limits of the City. I must therefore deal with each case separately, and say whether in this or that particular case it be or be not within the limits of "London" as that word is used by the testator, and as it is popularly understood.

I concur in the argument of counsel, that the word "London" in its popular sense is a word of fluctuating extent, that it had a different meaning two hundred years ago from what it had one hundred years ago, and that one hundred years ago it was less extensive than it was at the commencement of this century, and that the limits of London since 1800 have been extending gradually up to the present time. In my opinion, this is the mode in which I must deal with the bequest in question: by considering what hospitals may properly be said to be included in the words "London hospitals" in 1859, when the testator died.

In order to afford a guide to the parties concerned in this matter, and without laying down any definition, I will explain, as well as I am able, the general grounds on which I shall proceed to hold an Institution to be within the objects of the testator's bounty. Sir William Petty, writing in the reign of James the Second, in a passage to which I was referred, defines London to be "the housing within the walls of the old city with the liberties thereof, Westminster, and the borough of Southwark, and so much of the built ground in Middlesex and Surrey whose houses are contiguous unto and within call of those before mentioned."

Not adopting the exact expression of that very observant and intelligent writer, I may say, however, I consider that this is the principle upon which it is to be decided, and that those houses lie within London which stand in a street continuous to the cities of London and Westminster and the borough of Southwark, that is, with contiguous houses. More accurately than this, as a general statement, I cannot define it; but, as an instance of my meaning, I am of opinion that the Brompton Consumption Hospital is included within the limits of London, and that it is one of the hospitals of London within the meaning of this bequest.

I think also that I see indications in the testator's will that he included in his bequest hospitals of which the inhabitants of London had the benefit, and that it has reference not merely to the local description, but to the patients as well. For instance, he gives the reversion of a sum of money which is bequeathed to Ellen Minchin for life to the hospital previously mentioned in his former will; on turning to which, it appears that it is left to the "Hospital of the Lunatics of London." This is undoubtedly very

slight; but however this may be, my opinion is that I cannot lay down a general rigid line to include some and exclude others, and that I must deal with each case separately; and to avoid multiplicity of application, I afford a guide, as far as I am able, by stating that the bequest includes certain hospitals which I point out, and it, of course, includes all those which are still nearer London or more obviously within that meaning; and I do this on the principle that I have pointed out.

It is with this view that I have selected the hospital at Brompton as being one which is entitled to a share in this bequest. If any doubt arise as to any other Institution, I must deal with it separately in chambers. But, of course, no hospital which was not in existence at the date of the testator's decease can have any share in the bequest. (1)

The extent of London being thus settled, it remained to determine what Institutions were included under the term "*Hospices de Londres.*" There were one hundred and seventy-five claimants, and the Chief Clerk arranged them in nine classes, subdividing the first class into eight sub-classes. Classes I. and II. contained Institutions commonly known as "asylums"; Class III., Institutions where relief was not gratuitous; Classes IV., V. and VI., hospitals for the cure of diseases; Class VII., convalescent hospitals; Class VIII., dispensaries; Class IX., reformatories.

Some of the Institutions appeared by counsel before the Master of the Rolls, who delivered the following Judgment, November 3, 1865.

Before setting out the Judgment, it should be observed that, up to this time, none of the claimants had produced any evidence of witnesses skilled in the French language as to the meaning and use of the word "*hospices*" in the phrase, "*les Hospices de Paris et de Londres*"; and it would appear from the Judgment itself that the chief evidence before the Court consisted of certain dictionaries, some of the annual reports of the *Administration de l'Assistance publique*, and a medical handbook, *Nouveau Formulaire magistral*, by Bouchardat.

(1) 33 Beav. 384; S. C. 33 L. J. (N. S.) Ch. 314.

LORD ROMILLY, M.R.:—

The question to be determined on this summons, which is adjourned from Chambers, is the meaning of the following bequest in the testator's will, which is written in the French language, viz.:—"*Je donne et lègue tous les objets et valeurs dont je n'ai pas disposé ci-dessus aux Hospices de Paris et de Londres, que j'institue à cet effet pour mes légataires universels.*"

In other words, the question I have to determine is, what English Institutions are included in the words "*les Hospices de Londres*"? The same word is applied both to London and Paris, and must, in my opinion, receive the same interpretation; and consequently the words "*Hospices de Londres*" must include such Institutions as, if they were situated in Paris, would fall within the description of "*les Hospices de Paris.*"

With respect to that portion of the bequest which relates to "*les Hospices de Paris,*" the question before me cannot arise, because by the law of that country all bequests in favour of charity are brought into one common fund, and applied by a central Board termed "*L'Administration de l'Assistance publique.*" It is not in that country competent for a testator to select one particular hospital or almshouse at Paris, and give a bequest exclusively to that charity; if given, it belongs to the general fund, and the persons who administer it apply the proceeds as they think fit. The question, therefore, is confined to London Institutions; and, in my opinion, only those Institutions in London which, if they were situated in Paris, would be termed "*des Hospices*" are entitled to share in the bequest. Having stated this much, it is also proper to state by way of preliminary remark that, in my opinion, the fact, that any Institution in London is called "*Hospice,*" does not of itself give it any claim to be admitted; it must, in order to share in the bequest, fulfil the conditions of what is meant by the word "*hospice*" in French.

The consequence of this opinion of mine is that it is wholly unnecessary to consider, for the purpose of deciding this question, what Institution would fall within the meaning of the words "hospitals of London," unless it could be first established that the word "*hospice*" was accurately and precisely rendered in English by the word "hospital." My opinion is the word "*hospice*"

in French is not accurately equivalent to the word "hospital" in English, and this releases me, therefore, from the necessity of considering the extent of the meaning of the word "hospital," or its variations from former periods of time, when the word included almshouses and places of instruction, such as Christ's Hospital. On examining the meaning of the word "*hospice*," I find that in all accurate writers a distinction is made between "*hospice*" and "*hôpital*." I do not by this mean to say that they are never used as equivalent expressions, or nearly so; but that in all the cases that I have been able to discover, especially where the discussion has been relating to charities, a marked distinction has been made between "*les hospices*" and "*les hôpitaux*."

In the reports and statements of accounts rendered annually by the *Administration générale de l'Assistance publique*, this distinction is constantly and rigidly preserved. I have consulted a large number of them, and I find no instance in which, as it appears to me, these terms are applied indiscriminately.

In the lists of bequests which accompany these accounts, I find that, where donations are made to hospitals alone, the word "*hospice*" does not occur in the heading of the list; and where the bequests are to hospices, and the hospitals are not included, the word "*hôpitaux*" is excluded from the title. In one of them, that of the year 1849, which contains "*Notes et Renseignements sur les Hôpitaux et Hospices civils de la Ville de Paris*," rendered necessary, apparently, by the alteration produced by the revolution of 1848, occurs the following passage, as an explanation of what is meant by the word "*Hospices*":—"*On désigne sous le nom d'hospices les asiles ouverts à tous ceux que l'indigence et la vieillesse, l'enfance et l'abandon, l'aliénation ou des infirmités incurables mettent hors d'état de pourvoir eux-mêmes aux besoins de leur existence. On les subdivise en hospices proprement dits et en maisons de retraite. L'admission est gratuite dans les premiers, et dans les secondes elle n'a lieu que moyennant une provision annuelle ou le versement d'un capital, dont le montant est fixé par les règlements.*" Which I translate thus:—"Under the name of '*hospice*' are designated abodes which are open to all those who, by poverty and old age, by infirmity and neglect, by mental alienation or by incurable disease, are unable of them-

selves to provide the means of existence. They are divided into *hospices* properly so called and into asylums. In the former the admission is gratuitous; in the latter it is conditional on payment of an annual or of a principal sum of money, the amount of which is fixed by the rules of the Institution."

In the *Nouveau Formulaire magistral*, relating to the charitable Institutions of Paris, by Bouchardat, which is a standard work, and has reached its 13th edition, occurs the following passage:—

"*Dans la description des établissements de l'Administration, je suivrai la division actuellement adoptée dans les comptes annuels:* 1°. *hôpitaux*, 2°. *hospices*, 3°. *établissements spéciaux. Les établissements consacrés aux malades sont désignés plus particulièrement sous le nom d'hôpitaux, et nous appliquons le nom d'hospices aux maisons consacrées à l'enfance, à la vieillesse ou à des infirmités qui ne sont pas susceptibles de guérison.*" The meaning of which I render as follows:—"In the description of the Institutions under the control of the public Administration, I shall follow the division at present adopted in their annual reports: 1st, hospitals; 2ndly, *hospices;* 3rdly, establishments of a special character. The establishments devoted to the sick are more particularly designated by the name of 'hospitals,' and we apply the name of '*hospices*' to houses devoted to children, to old people, or to persons afflicted with incurable infirmities."

The third division of establishments of a special character seems to include principally assistance given to the objects of the charity without receiving them into any house or building.

These definitions of the meaning of the word "*hospices*," although not identical, are in substance the same.

I am of opinion that the word "*Hospices*" as applied to Institutions in London must be taken in the sense here described. I find, by consulting many volumes of the *Moniteur*, under the places referred to in the index under the words "*Hôpitaux*" and "*Hospices*," that they are always kept distinct, and that this division uniformly prevails. It is, however, but fair to add that, in the list of hospitals, I have discovered Institutions which, according to the definition I have given, are properly "*des Hospices*," and also that the Hospital for Lying-in Women is in one list called "*Hospice d'Accouchement*," while it is obvious that, according to the

previous definitions, if correct, that Institution ought to be classed among the hospitals, and not amongst "*les Hospices.*" Still, in my opinion, this, although it may not always have been strictly followed, is the proper definition to guide me, and I shall, unless a contrary intention is to be discovered from the text of Lord Henry Seymour's will, hold that the word "*Hospices*" must be construed, by the strict meaning of that word in the French language, according to the definition I have adopted as applied to the London Institutions. The rest of the will throws no further light on the subject than is to be gathered from the following passage, where it says:—

"*Je donne et legue à M^lle^ Ellen Minchin, à condition que'lle ne se mariera pas, l'usufruit, sa vie durant, de la somme nécessaire pour lui assurer un revenu de dix mille francs par an. La nue propriété de cette somme appartiendra à l'Hospice des Lunatics de Londres auquel je fais don et legs.*"

But this, in truth, does not affect the previous definition, and is indeed rather a confirmation of the conclusion to which I had previously come; as an Institution for persons of unsound mind falls within the strict definitions of the word "*hospice*" to which I have referred.

I shall therefore hold that all those Institutions are included in this bequest which gratuitously receive within their walls and provide for persons who are unable to take care of themselves, either from old age combined with poverty, infancy combined with neglect, from mental incapacity, or by reason of any bodily ailment which is not susceptible of cure. That, in my opinion, is the best and most accurate meaning and construction I can give to the word "*Hospices*" as employed in the will of Lord Henry Seymour.

The result of this will be at once to exclude from any interest in this bequest all those Institutions in London which are usually called "hospitals"; which are founded for the reception of sick persons, the inmates in which are discharged alike from the hospital when they are cured, or when it is discovered that the disease is lingering or incurable. This includes the great London hospitals, such as St. Bartholomew's, St. George's, and the like. It will also exclude all the Institutions, whether called "hospitals"

or not, the principal object of which is instruction, such as Christ's Hospital. It will also exclude all Institutions which do not receive persons within their walls, such as dispensaries.

In order to assist the Court in coming to a conclusion on this subject, Mr. Hume has made a special certificate, in which he has divided the applicants into nine principal classes, the first of which is subdivided into sub-classes; and as far as the materials before me have enabled me, I have examined these and applied to them the definitions I have laid down as the principle by which Institutions seeking to participate in this bequest are to be tested.

In Class I., although I have not found in the papers given to me sufficient to enable me to decide on all the Institutions who are claimants in this class, as a general rule, I think they are all entitled to share in the legacy, but I cannot determine each individual one without seeing a copy of the rules or annual report published of each; upon furnishing which it will possibly appear that several ought to be excluded. Upon the information I already have, it is, I think, plain that many exceptions must be made to the general admission. I proceed to refer to them.

In sub-class No. 1:—

Jacob Henry Moses' Almshouses were founded in 1862. That is after the testator's death, and is consequently not included in his bequest.

In sub-class No. 2:—

The Hospital for Paralysed Epileptic Patients would, on the principles I have stated, be excluded.

With respect to the Hospital of St. John of Jerusalem, Great Ormond Street, No. 107, I have nothing before me to show the character of that Institution.

In sub-classes Nos. 3 and 4, several would seem to be excluded on account of the site of the charity not being within the limits of London as laid down by me.

In sub-class No. 5:—

As regards St. Margaret's Hospital, Tothill Fields, called the Green Coat Schools, and the Grey Coat Hospital, I want a copy of the rules, and a statement of the objects for which these Institutions are founded. At present they appear to me to be

founded for instruction, and not for boys suffering from poverty and neglect.

The Boys' Refuge, Commercial Street, Whitechapel, receives payment for the admission of boys, and where the payment fails, the boy is discharged; so I infer from the details given in their printed copy of rules, which is before me.

Christ's Hospital, as I have before observed, seems to me to be simply a place of instruction. Bridewell Hospital seems to me to be in the character of a prison rather than that of a "*Hospice.*" The British Orphan Asylum is situate out of the limits of the charity, being at Slough, in Bucks. All these must be excluded.

In sub-class No. 6, I think Bethlem and St. Luke's must be included to participate, but No. 35, the Asylum for Idiots at Earlswood, seems to be excluded by its position.

In sub-class No. 7, I require further information respecting these charities before pronouncing a final opinion respecting them.

In sub-class No. 8, No. 15 seems to be excluded as a school. No. 17 seems to be an ordinary hospital. (1) Nos. 118, 119, the Little Sisters of the Poor, do not appear to be properly a London charity. The only information I have respecting it is a paper extracted from the *Morning Post* of February 19, 1863, describing a stranger's visit to their dwellings; and another paper extracted from the *Dundee Advertiser* of the same month, but no statement by any person connected with the Institution. If I may trust to the facts specified in the two newspapers, it seems to be a species of female Franciscan order, which rejects all property and solicits alms for the sake of the poor, whom they receive and feed as inmates; but it appears that the Institution in London is only a branch of a larger Institution, having ramifications in many places both in and out of England, and this being so, I think it cannot be treated as one of the "*Hospices*" of London.

The Institutions under Class II. seem to me to be analogous to those in Class I., and to be equally admissible to share in the legacy.

(1) No. 15, The Warehousemen and Clerks' Schools for Orphans and Necessitous Children. No. 17, The Jews' Hospital, Lower Norwood.

The Institutions under Class III. are, in my opinion, excluded.

I think it essential that the charity should be gratuitous. I am unable to draw with precision any line which shall say when the payment for admission is remuneration or when it is not. In any case, where payment is required as a condition for admission, I am of opinion that the charity is not entitled to share in the bequest.

The Institutions under Classes IV., V., VI. are, in my opinion, all excluded. They are hospitals for the cure of diseases in the ordinary sense of the term, and do not, in my opinion, come within the definition of "*Hospices.*"

The Institutions comprised in Class VII., which are for the reception of patients who are convalescent and discharged from the other hospitals, are of the same character, and must be classed with the hospitals for the cure of disorders.

The charities comprised in Class VIII. are Institutions which do not receive inmates, and are for the reasons I have stated also excluded.

The Institutions under Class IX., which comprise reformatories, I have been for the want of materials unable to decide upon. If the inmates are detained there compulsorily, they are not in my opinion "*des Hospices*"; if not, I must see the rules and reports before I can finally determine respecting them.

With respect to most of the Institutions, the rule I have laid down, if it remain undisturbed, will be of easy application, and will not require any further discussion; but with respect to others, it may be very difficult to say with confidence they fall within or without the line. In all these cases, if the necessary information is laid before me, I will decide whether in my opinion they are or are not to participate in this bequest. (1)

In conformity with this Judgment, the Chief Clerk drew up his certificate, dated June 13, 1866, in the following terms, appending to it two schedules, the first containing the names of the Institutions of which the claims were allowed, and the second the names of the Institutions of which the claims were disallowed on the principle of the Judgment.

(1) MS. of the late Lord Romilly.

"The effect, according to the laws of France, of the residuary bequest by the said testator to the Paris and London hospitals ('*aux Hospices de Paris et de Londres*') is to give such bequest as to the Paris hospitals ('*aux Hospices de Paris*') to the Institution or Board known by the name of '*L'Administration générale de l'Assistance publique*,' and as to the London hospitals, '*aux Hospices de Londres*,' to such Institutions as fall within the meaning of the word '*Hospices*' next hereinafter stated.

"The Institutions or persons which are, according to the law of France, meant by the word '*Hospices*' are such as gratuitously receive within their walls and provide for persons who are unable to take care of themselves, either from old age combined with poverty, from infancy combined with neglect, from mental incapacity or by reason of any bodily ailment which is not susceptible of cure.

"The Institutions or persons entitled to the residuary bequest contained in the said will and testamentary papers, or some or one of them as follows, namely: in France, the said Institution or Board known by the name of '*L'Administration générale de l'Assistance publique*,' and in England, the several Institutions or persons whose names are set forth in the first schedule hereto.

"The several Institutions and persons whose names are set forth in the second schedule hereto have claimed to be entitled to or interested in the said residuary bequest, but their claims have been disallowed."

All the Institutions thus excluded acquiesced in the certificate, with the exception of the class of Institutions usually called "hospitals," and on their behalf the following nine hospitals resolved to appeal to vary the certificate:—St. Bartholomew's Hospital, St. Thomas's Hospital, Guy's Hospital, the London Hospital, St. Mary's Hospital, St. George's Hospital, the Middlesex Hospital, the Royal Free Hospital, and the Brompton Consumption Hospital.

With this view they applied for leave to adduce further evidence, more particularly the evidence of persons skilled in the French language, as to the meaning of the words, "*les Hospices de Paris et de Londres.*" The application was granted, and they filed four Opinions, explaining the history and use of the words.

The first was the Opinion of M. Évariste Blondel, a French advocate, which was supported by a large number of quotations from authorities; the second the Opinion of M. Lacan, also a French advocate, similarly supported; the third the Opinion of M. Isidore Brasseur, formerly Professor of French in King's College and the Charterhouse, London, and the author of several educational French works; and the fourth that of Mr. A. Spiers, the author of a French and English dictionary. It was then agreed that these Opinions and the following books should be received in evidence by consent of the parties and charities without further proof:—

Les Codes français, par Tripier. 1866.

The reports and statements of accounts rendered annually by the *Administration générale de l'Assistance publique,* from 1845 to 1865, both inclusive.

Nouveau Formulaire magistral, par Bouchardat (13th edition).

Le Moniteur, from 1789 to 1823, both inclusive.

Dictionnaire de l'Académie française. Paris, 1865.

Dictionnaire de Mons. Bescherelle aîné. Paris, 1849.

Dictionnaire de Législation usuelle, par Chabrol Chaméau. Paris, 1849.

Grand Dictionnaire, par Fleming et Telbins. Paris, 1852.

Législation charitable, par le Baron de Watteville. Paris, 1863.

Dictionnaire, par Boiste.

Dictionnaire universel, par Poitevin.

Dictionnaire des Dictionnaires, par Landais. 1854.

Dictionnaire international français et anglais. Hamilton et Legros.

Tarver's *Phraseological Dictionary.*

Dictionnaire, par M. Spiers (17th and latest edition).

Almanac général de Médecine pour la Ville de Paris, 1843–1858.

Dictionnaire de la Conversation. 1836.

Encyclopédie moderne.

After the production of the additional evidence, the above-mentioned hospitals applied to the Master of the Rolls to vary the certificate so as to admit their claims. The question, however, was not reheard, but the Master of the Rolls made an order, dated November 10, 1865, refusing the application.

Against this order, the hospitals above named appealed to the Lords Justices.

The first eight hospitals appealed jointly. The Brompton Consumption Hospital appealed separately.

The appeal was heard before the Lords Justices, LORD CAIRNS, and SIR JOHN ROLT, in the latter part of 1867, and occupied several days.

Mr. *Bacon*, Q.C., Mr. *E. Kay*, Q.C., and Mr. *F. W. Gibbs* appeared for the joint Appellants; Mr. *De Gex*, Q.C., and Mr. *W. W. Streeten*, for the Brompton Consumption Hospital.

Mr. *Jessel*, Q.C., Mr. *Bagshawe*, and Mr. *John Chester*, for the Respondents, the Institutions admitted by the Master of the Rolls, and called upon the argument "asylums," as distinguished from "hospitals."

Mr. *Baggallay*, Q.C., and Mr. *Schomberg*, Q.C., for the Plaintiff.

Mr. *Wickens*, for the Attorney-General.

For the Appellants it was contended that they were entitled to share in the legacy on three main grounds:—

1. That the word "*hospice*" was primarily generic, including both hospitals and asylums, and that the specific meaning of asylum was to be given to it only when such intention was indicated by the connection in which the word was found, as, for instance, in the expression "*hospices et hôpitaux*," or by the subject-matter with regard to which the word was used.

2. That the plural expression, "*les hospices de Paris*," included the hospitals of the city, more particularly in regard to external and financial relations, and that the distinction made by the French administration between *hôpitaux* and *hospices* had reference to internal and administrative arrangements.

3. That legacies "*aux Hospices de Paris*" were, in fact, under the law of France, administered by the *Administration de l'Assistance publique à Paris* for the benefit of both hospitals and asylums, and that, as the will was the will of a domiciled Frenchman, the same principle ought to prevail here.

In support of their contention as to the meaning of the word

"*hospice*," they referred to the opinions already mentioned as filed by them.

The opinion of M. Blondel was arranged under heads, with quotations justifying each statement, in the form of an answer to the question asked of him by the Appellants as to the grammatical and juridical definitions of the words "*hôpital*" and "*hospice*," and was as follows:—

"*Le soussigné répond:*

"*Que dans le langage usuel et légal français le mot hospice est synonyme d'hôpital, et que la distinction toute moderne, établie entre les deux mots, est une distinction plutôt administrative que générale, qui n'infirme pas malgré sa raison d'être actuellement l'ampleur et la généralité du mot français hospice.*

"*Pour justifier cette réponse, le soussigné se propose d'établir:*

"1. *Que le mot hôpital signifiait autrefois maison de secours, dans laquelle on recevait indifféremment des malades, des orphelins ou des incurables, et qu'à la même époque le mot hospice signifiait hôtellerie pour les religieux.*

"2. *Qu'au moment de la Révolution française le mot hôpital, qui inspirait au peuple une grande aversion, a par euphémisme été remplacé par le mot hospice, et que depuis ce temps, pendant plusieurs années, le mot hospice a signifié absolument la même chose que celle qui désignait le mot hôpital.*

"3. *Que le législateur qui le premier a employé le mot hospice l'a employé indifféremment avec le mot hôpital pour désigner absolument la même chose, la même maison.*

"4. *Que grammaticalement le mot hôpital aujourd'hui a la même signification qu'autrefois.*

"5. *Que vulgairement on emploie le mot hôpital pour désigner un hospice, et le mot hospice pour designer un hôpital.*

"6. *Que, suivant le langage légal, hospice veut dire aujourd'hui ce qui signifiait, autrefois, hôpital, c'est-a-dire, maison dans laquelle on reçoit simultanément ou séparément les malades, les indigents vieillards, les orphelins, les fous, les incurables, et que la division des établissements charitables en hospice et hôpital est une division purement médicale et administrative.*"

The opinions of M. Lacan, Mr. Spiers, and M. Brasseur, coincided with that of M. Blondel.

The Appellants then traced the history of the *Administration de l'Assistance publique à Paris*, and the method adopted by that body in dealing with gifts and legacies made to them, as shown by their annual reports.

The Administration was created in 1801 during the Consulate, by an *arrêté* dated 27 *Nivôse, an* IX, under the title of "*L'Administration des Hospices civils de la Commune de Paris.*" (1) The most important sections of this *arrêté* will be found quoted in the Judgment of Lord Cairns. The Administration received its present name under a law of January 10, 1849.

"*Art.* 1^er^. *L'administration de l'assistance publique à Paris comprend le service des secours à domicile et le service des hôpitaux et hospices civils.*" (2)

The classification of the Institutions as "*Hôpitaux*" and "*Hospices,*" adopted by the Master of the Rolls from the *Notes et Renseignements* of the administration in 1849, was explained by the report of 1846, which gave the reason of the classification. It stated that the charitable Institutions had been centralised in 1801 as "*les Hospices,*" in order that the scattered resources of public charity might be better employed; but that they were now classified as "*Hôpitaux et Hospices,*" that each Institution might minister to some special wants. It was contended, therefore, that this classification had reference to internal and medical administration only, and that, as regards property and external relations, all the Institutions were included under "*les Hospices de Paris*"; and it was pointed out that this view was supported by the fact that the same report spoke of the rise of prices, causing expense "*aux Hospices,*" and of the "*Dette de la Ville envers les Hospices,*" a debt constantly mentioned in subsequent reports in the same words. The reports contained every year lists of benefactions to the Institutions of Paris; and down to 1849, inclusive, all benefactions, whether given "*aux Hospices*" or to any particular *Hôpital* or *Hospice* by name, were arranged in the reports under the general heading, "*Dons et Legs aux Hospices*"; but from 1860 downwards this heading was changed to "*Dons et Legs*

(1) *Le Moniteur universel,* an IX, tom. i. 497. See *Le Moniteur,* 1805, p. 1254.

(2) Tripier, *Les Codes français,* p. 1426.

aux Hôpitaux et Hospices"; and gifts and legacies "*aux Hospices*," "*aux Hôpitaux et Hospices*," and to the Administration, were all put under this new heading.

With regard to the employment of benefactions by the administration, the Appellants pointed out that, in 1853, a legacy was left "*aux Hospices*" by the Countess Lariboisière, and that it had been applied by the administration in building a hospital for the sick, called "Hôpital Lariboisière"; that, in 1857, the "*Dons et Legs aux Hospices*" were subdivided and arranged in two columns, headed respectively—

1. *Avec destination spéciale,*
2. *Sans destination spéciale,*

gifts and legacies to particular Institutions being put under the former, and gifts and legacies "*aux Hospices*" under the latter heading. They further referred to a series of passages in these reports, stating the employment by the Administration of the benefactions "*conformément aux intentions des bienfaiteurs*," and quoted, in particular, the report of 1861, p. xxvii, as explaining clearly the practice of the Administration:—

"*Parmi les dons et legs profitant à* 1861, *et qui se sont élevés à* 1,095,500 *francs,* 260,189 *fr. ont dû être placés en rentes en exécution de la volonté des donateurs;* 192,755 *fr. ont été distribués immédiatement aux donataires sauf imputation des droits de mutation correspondants. Le surplus, légué sans affectation spéciale à l'administration, est entré dans la masse de ses capitaux et a contribué avec les capitaux d'autre provenance à couvrir les dépenses énumérées sous le titre de 'Remplois improductifs.'*"

On the part of the Respondents it was contended that, though the word "*hospice*" had a generic meaning in the beginning of the century, it began about 1817 to acquire a specific meaning limited to asylums; that this was now its ordinary and well-understood meaning; that this meaning was recognised by the Administration in the classification of the charitable Institutions of Paris, admitted to have been adopted since 1848, and was therefore the meaning to be given to the word in the will. In support of this contention, a paper of extracts from French authors, with English translations, was handed in illustrating this use of the word since 1817.

The authorities referred to on both sides were numerous, and it will be sufficient to set out the passages in French of which translations were quoted in the Judgments of the Lords Justices.

1. DICTIONNAIRE DE L'ACADÉMIE FRANÇAISE. 1694.

"HOSPICE, s.—*Maison destinée à retirer les religieux qui passent d'un convent à un autre. Il y a à Lusarches un hospice pour les religieux de Pique-puce. Il signifie aussi une maison bâtie dans une grande ville pour y recevoir pendant la guerre ou autres mauvais temps les religieux et religieuses des couvents bâtis dans la campagne. L'Hospice de Lille. L'Hospice d'Auchin à Tournay. En quelques endroits on le nomme aussi refuge.*

"*Il signifie aussi un petit couvent tiré d'un autre plus grand couvent du même ordre.*"

"HOSPITAL, s. m.—*Maison fondée et établie pour recevoir les pauvres, les malades, les passants, les y loger, les nourrir, les traiter par charité. Hospital général, Hospital des incurables.*"

2. DICTIONNAIRE DE LA CONVERSATION ET DE LA LECTURE, *publié sous la direction de M. Duckett par une société de savants et de gens de lettres. 2e édition. Paris*, 1865.

"HÔPITAL *et* HOSPICE.—*Jusqu'à l'époque de la Révolution tous les asiles publics ouverts aux malades et aux infirmes indigents étaient désignés sous le nom général d'hôpitaux; mais ce nom d'hôpital réveillait chez le peuple l'idée d'un lieu si repoussant, d'une pitié si insultante et si cruelle que, devenu le maître, il le proscrivit avec horreur et lui substitua le nom d'hospice.*—Anquetin."

3. DICTIONNAIRE DE L'ÉCONOMIE CHARITABLE *de Martin Doisy. Paris*, 1857. T. iv. p. 778.

"HOSPITALITÉ; HOSPICE.—*On emploie sans distinction dans les édits et lettres patentes des deux derniers siècles le mot d'Hôpital-général et d'Hôtel-Dieu. Le mot d'hospice est plus particulièrement un mot moderne; on l'emploie peu avant* 1789. *Le mot d'hôpital désignait indifféremment le lieu où l'on soignait les malades, et le*

lieu d'hospitalité des infirmes, des vieillards, des enfants et des pauvres.

"*Il fut particulièrement odieux à la Révolution de* 1789, *parce que la charité chrétienne l'avait particulièrement consacré; c'est pourquoi on lui préféra dans la langue administrative le mot hospice.*"

4. L'ALMANACH NATIONALE DE FRANCE POUR L'AN XI (1803).

"*Hospices civils de Paris.*

"*Les hospices civils de Paris forment deux classes distinctes—l'une comprend les hospices des malades, l'autre les hospices des indigents.*"

5. L'ALMANACH NATIONALE DE FRANCE POUR L'AN XII (1804).

"*Hospices civils de Paris.*

"*Les hospices de Paris forment deux classes distinctes; l'une comprend les hôpitaux, dans lesquels on reçoit les malades, l'autre les hospices, dans lesquels on reçoit les indigents.*

"*Les premiers sont consacrés au soulagement de l'humanité souffrante; les seconds servent d'asile aux enfants, aux infirmes et aux vieillards indigents.*"

6. "26 *août* 1795.—LOI *qui sursoit à la vente des biens des hospices et autres établissements de bienfaisance.*

"*La Convention nationale, sur la motion d'un de ses membres, décrète qu'il est sursis à la vente des biens des hospices de vieillards, de malades, d'enfants, maisons de secours et autres établissements de bienfaisance jusqu'au rapport qui lui sera fait sous une décade par ses comités des Secours publics et des Finances sur la demande en rapport de la loi du* 23 *Messidor.*"

7. "24 *octobre* 1795.—LOI *qui suspend celle du* 23 *Messidor, an* II, *en ce qui concerne l'administration et la perception des revenus des établissements de bienfaisance.*"

"*Art.* 3. *Les agents de la Commission des revenus nationaux seront tenus de remettre dans la décade qui suivra la publication de la présente loi entre les mains des administrations des hospices et*

autres établissements de bienfaisance tous les titres, inventaires, états de recette et de dépense, baux et généralement tous les papiers relatifs à l'administration de ces établissements qui ont été déposés dans leur bureaux. Sont exceptés les titres féodaux qui n'ont pas de rapport à la propriété."

8. "7 *octobre* 1796.—LOI *qui conserve les hospices civils dans la jouissance de leurs biens et règle la manière dont ils seront administrés.*

"*Art.* 1. *Les administrations municipales auront la surveillance immédiate des hospices civils établis dans leur arrondissements. Elles nommeront une commission composée de cinq citoyens résidant dans le canton, qui éliront entre eux un président et choisiront un secrétaire.*"

"*Art.* 5. *Les hospices civils sont conservés dans la jouissance de leurs biens, des rentes et redevances qui leur sont dues par le trésor public ou par des particuliers.*"

9. "14 *novembre* 1796.—ARRÊTÉ *concernant la surveillance des hospices dans les communes ou il y a plusieurs administrations municipales.*

"*Art* 1. *Les hospices civils situés dans les communes où il existe plusieurs administrations municipales seront sous la surveillance immédiate des bureaux centraux.*"

10. "12 *septembre* 1798.—LOI *qui affecte des fonds aux dépenses des hospices civils et des enfants de la patrie.*"

"*Art.* 3. *Les hospices civils continueront néanmoins d'être compris dans la distribution décadaire pour assurer leur service courant.*"

11. "1 *mai* 1801.—ARRÊTÉ *relatif au payment des militaires malades admis dans les hospices civils.*

"*Art.* 1. *Dans tous les hospices civils qui n'ont pas fait au ministre de la guerre des soumissions acceptées, le prix journée des militaires malades sera de dix centimes en sus de ce qu'il était en* 1788."

12. AVIS DU CONSEIL D'ÉTAT *du* 3 *novembre* 1809.

"*Le Conseil d'État est d'avis :*

"1. *Que les effets mobiliers apportés par les malades décédés dans les hospices, et qui y ont été traités gratuitement, doivent appartenir aux dits hospices, à l'exclusion des héritiers et du domaine en cas de déshérence.*"

13. CODE CIVIL.

"*Art.* 910. *Les dispositions entre vifs ou par testament au profit des hospices des pauvres d'une commune ou établissemens d'utilité publique n'auront leur effet qu'autant qu'elles seront autorisées par une ordonnance royale.*"

"*Art.* 937. *Les donations faites au profit d'hospices des pauvres d'une commune ou d'établissemens d'utilité publique seront acceptées par les administrateurs de ces communes ou établissemens après y avoir été dûment autorisés.*"

14. DICTIONNAIRE DES SCIENCES MÉDICALES. *Par une Société de Médecins et Chirurgiens. Paris,* 1817. P. 369.

"HÔPITAL, s. m.—*Avant de s'occuper d'aucun autre objet, il importe de s'expliquer sur la véritable signification de certains noms sous lesquels il n'est pas indifférent de désigner les divers établissemens hospitaliers, si on veut bien les distinguer les uns des autres.*

"HÔPITAUX *et* HÔTELS-DIEU.—*L'Hospice Beaujon; l'Hospice de Madame Necker. Ceux-ci sont de vrais hôpitaux. Le nom d'hospice auquel on donna la préférence, fut-il adopté par mode, par modestie ou par prétention? L'innovation fut toujours un mal. Ces exemples eurent des imitateurs, et ces imitations conduisirent à beaucoup de confusion dans les idées et dans la valeur du langage.*

"*Hospice, sous des diverses acceptions, hospice,* hospitium, *est un terme vague ou plutôt multivoque si l'on peut parler ainsi dont l'acception est aussi variée que peut l'être la condition à laquelle on est reçu pour loger et vivre momentanément ou à demeure dans une maison dont on n'est pas le maître.*

"*Ainsi, quoiqu'hospice soit l'ancienne traduction littérale d'*hospitium, *l'idée qu'il faut y attacher aujourd'hui et celle qu'il ne faut plus y attacher ne permettraient plus d'appeler hospice ni l'auberge à tout venant ni la maison où l'on reçoit l'accueil de l'hospitalité. Tâchons de débrouiller le chaos de toutes ces dénominations sur*

lesquelles il est à désirer de ne plus rien laisser d'équivoque ni d'arbitraire.

"*J'appellerais hospice un établissement de bienfaisance publique dans lequel sont logées, nourries et entretenues des personnes que leur âge trop ou trop peu avancé, des infirmités et le défaut de fortune forcent de s'y réunir en s'y occupant d'un travail proportionné à leurs forces, et qui tourne au profit de la communauté ou à l'avantage de celui qui s'y est livré pour se procurer quelques douceurs.*

"*L'hospice diffère essentiellement de l'hôpital en ce que celui-ci doit être d'une manière exclusive réservé pour les malades auxquels sont actuellement nécessaires les secours de l'art de guérir, et que l'hospice est destiné, soit à des individus en santé soit à ceux dont les infirmités sont chroniques, et telles que les tentatives de traitement leur seraient inutiles et quelquefois dangereuses. C'est pour cela qu'il faut dire Hospice des Enfans-trouvés, Hospice des Incurables.*"

15. JOURNAL DES SAVANS, *mars* 1817. *Article de M. Raynouard, membre de l'Institut de l'Acadêmie française.* "*Rapport fait au Conseil général des Hospices par un de ses membres sur l'état des Hôpitaux, des Hospices et des Secours à domicile à Paris, depuis le* 1^er^ *janvier* 1804 *jusqu'au* 1^er^ *janvier* 1814. *Se vend au profit des pauvres, chez M*^me^ *Huzard, Imprimeur des Hospices.*" P. 152.

"*Dès l'an* XI (1803) *un Rapport fait au Conseil général des Hospices avait présenté le tableau de tout ce qui avait été entrepris et exécuté jusqu'alors. Le Rapport dont je vais parler offre le même tableau depuis* 1804 *jusqu'en* 1814. *On y distingue trois parties principales, l'administration des hôpitaux, celle des hospices et celle des secours à domicile,*" *etc.*

16. PLANS DES HÔPITAUX ET HOSPICES CIVILS DE LA VILLE DE PARIS. *Levés par ordre du Conseil général d'Administration de ces Établissemens. Paris,* 1820.

17. RÉPERTOIRE DE JURISPRUDENCE. *Par M. Merlin. Paris,* 1827.

"HÔPITAL.—*Maison destinée à recevoir les pauvres, les valides, les loger, les nourrir, les traiter par charité. Les hôpitaux portent aujourd'hui le nom d'hospices civils.*"

18. ENCYCLOPÉDIE MODERNE *de Courtier. Édition de* 1828. Tom. xiv. p. 332.

"*Lorsqu'il s'agit des maisons où le malade indigent et le pauvre vieillard reçoivent un asile et des moyens d'existence, il faut distinguer les hôpitaux des hospices.*"

19. ÉLÉMENTS DE DROIT PUBLIC ADMINISTRATIF. *Par M. Foucard. 2me édition. Paris,* 1839. Tom. iii. No. 237, p. 200.

"*On entend par le mot hospices des établissements destinés à recevoir les indigents, les malades, les enfants trouvés ou abandonnés et les vieillards dénués de moyens d'existence.*"

20. DE LA BIENFAISANCE PUBLIQUE. *Par M. le Baron de Gérando etc., membre du Conseil général des Hospices de Paris. Paris,* 1839. Tom. iii. p. 311.

"*Les asiles hospitaliers se divisent naturellement en deux grandes classes, les uns destinés au traitement des malades, les autres servant de refuge aux vieillards, aux infirmes, aux enfants et à diverses espèces d'indigents autres que les malades.*

"*Les dénominations d'hôpital et d'hospice étaient autrefois appliquées indifféremment à l'une et à l'autre classe; elles servent aujourd'hui à les distinguer.*

"*Il y a aussi des établissemens qui réunissent à la fois ce double caractère. Telles sont les maisons d'aliénés et d'épileptiques, lorsque les incurables y sont réunis avec les malades.*

21. CIRCULAIRE PORTANT RÈGLEMENT POUR LE SERVICE INTÉRIEUR DES HOSPICES ET HÔPITAUX, 31 *janvier* 1840. *Législation charitable. Par M. le Baron de Watteville* Tom. i. p. 529.

"*Projet de règlement pour le service intérieur de l'hôpital ou de l'hospice de* ——.

"*J'insisterai sur l'importance de conserver aux noms d'hospice et d'hôpitaux les significations indiquées dans cette note. S'il peut*

être indifférent dans le langage ordinaire de confondre les dénominations, il n'en est pas de même dans le langage légal. Cette distinction a une portée que vous comprendrez sans peine.

"*L'hôpital reçoit:*

1°. *Les malades civils, hommes, femmes et enfants atteints de maladies aiguës ou blessés accidentellement;*

2°. *Les malades militaires ou marins;*

3°. *Les galeux;*

4°. *Les teigneux;*

5°. *Les vénériens;*

6°. *Les femmes enceintes.*

"*L'hospice reçoit:*

1°. *Les vieillards indigents et valides des deux sexes;*

2°. *Les incurables indigents des deux sexes;*

3°. *Les orphelins pauvres;*

4°. *Les enfants trouvés et abandonnés;*

5°. *Des vieillards valides et incurables à titre de pensionnaires.*"

22. ENCYCLOPÉDIE DES GENS DU MONDE ETC. *Par une Société de Savans etc.* *Paris*, 1840. P. 233.

"HOSPICES.—*Les mots hôpitaux et hospices ont été longtemps synonymes.*

"*Aujourd'hui le premier s'applique plus spécialement aux établissemens destinés à recevoir les malades ou les blessés, et le second à ceux qui seront d'asile aux vieillards, aux enfants ou aux incurables incapables de pourvoir à leur existence.*"

23. RÉPERTOIRE DES ÉTABLISSEMENTS DE BIENFAISANCE. *Par MM. Durieu et Roche.* *Paris*, 1842.

After speaking of the Hôtel-Dieu of Paris, and the Hospital "*des Pauvres matriculés,*" the writers continue:—

"*Les établissements qui se formèrent ensuite furent nommés maladreries, léproseries, hôpitaux. Les deux premières dénominations ont disparu, la dernière seule est restée. Depuis s'est produit celle d'hôpital, qui désigne spécialement les établissements où l'on reçoit les infirmes, les enfants, les vieillards. Mais dans le langage vulgaire comme dans celui des lois, le mot hospice s'emploie comme*

expression générique, et comprend tout à la fois les établissements où l'on reçoit des malades, et ceux dans lesquels on admet les infirmes, les vieillards et les enfants."

24. DICTIONNAIRE GÉNÉRAL RAISONNÉ DE LÉGISLATION, DE DOCTRINE ET DE JURISPRUDENCE. *Par Armande Daleoz. Partie supplémentaire. Paris,* 1841. Tom. v.

"HOSPICES; HÔPITAUX.—*Il est utile de bien fixer la distinction qui existe entre les hospices et les hôpitaux civils à cause de la différence de leur destination. Les hôpitaux reçoivent, etc. Les hospices reçoivent, etc.*"

25. TRAITÉ GÉNÉRAL DE DROIT ADMINISTRATIF APPLIQUÉ. *Par M. G. Dufour. Édition* 1844. Tome 3me, p. 420.

"*Les administrations hospitalières, animées d'un esprit de localité et de charité étroite, sont assez généralement portées à supposer que les hospices ne doivent s'ouvrir que pour les habitans de la commune. Mais le gouvernement a dans ses vues plus de grandeur et d'humanité; il s'attache à la loi du* 24 *Vendémiaire, an* II, *aux termes de laquelle 'tout malade domicilié de droit ou non qui sera sans ressources sera secouru ou à son domicile de fait ou dans l'hospice le plus voisin.'* (*Voy. Art.* 18.)

"'*Que les malades soient ou non domiciliés,' dit une circulaire du* 12 *janvier* 1829, '*ils doivent être traités à leur domicile de fait ou dans l'hospice le plus voisin. Tout malade peut et doit être admis dans tous les hospices; et quand la loi n'aurait pas pris soin de le prescrire, l'humanité imposerait aux administrations charitables une obligation qu'il est impossible de méconnaître.*'

"*On peut dire donc que le principe est que tout malade indigent, qu'il appartienne ou non à la ville, à la commune, doit être traité dans l'hospice le plus voisin et que tout malheureux doit être secouru sans distinction de religion, de pays et d'opinion.*"

P. 425:—

"*Les règles que nous venons d'exposer relativement à l'administration des hôpitaux et hospices sont inapplicables aux hospices et hôpitaux de Paris. L'étendue de la capitale, le nombre des pauvres à secourir dans son sein, l'importance des ressources ont de tout temps paru nécessiter une organisation particulière.*'

26. DICTIONNAIRE DE MÉDECINE, DE CHIRURGERIE, DE PHARMACIE ETC. *de P. H. Nysten.* 9^me^ *édition*; 1845. P. 434.

"HOSPICE, s. m.—Hospitium. *Établissement où sont logés, nourris et entretenus des individus infirmes ou d'âge avancé, denués de moyens d'existence. L'hospice diffère par conséquent de l'hôpital, qui n'est qu'un asile momentané, où l'on donne gratuitement aux malades les soins que leur état exige, mais qui ne doit contenir que des malades susceptibles de guérison. Ainsi l'on dit l'Hospice de la Salpêtrière, l'Hôpital de la Charité.*"

27. ANNALES DE LA CHARITÉ. *Paris*, 1845, 1846.

28. NOUVEAU FORMULAIRE MAGISTRAL. *Par A. Bouchardat. Paris*, 1845.

29. DICTIONNAIRE NATIONAL. *Par M. Bescherelle aîné. Paris*, 1846.

"HÔPITAL.—*Il y a cependant des institutions ayant le double caractère d'hôpitaux et d'hospices; c'est-à-dire, qui admettent indistinctement les malades et les infirmes.*"

30. DE L'INTERVENTION DE LA SOCIÉTÉ POUR PRÉVENIR ET SOULAGER LA MISÈRE. *Par Amande de Melun, Président de la Société d'Économie charitable. Paris*, 1849.

31. LE MONITEUR UNIVERSEL, 22 *décembre* 1850, p. 3663.

"*Assemblée Nationale Législative, Séance du Samedi*, 21 *décembre, etc.*

"*M. de Melun (du Nord) dépose au nom de la Commission d'Assistance publique le Rapport sur le projet de loi concernant les hospices et hôpitaux*," *etc.*

32. ENCYCLOPÉDIE DU DIX-NEUVIÈME SIÈCLE. *Paris*, 1852. Tome xiv. p. 134.

"HÔPITAL.—*Les progrès de l'économie charitable, de la science administrative, de l'hygiène publique et de la médecine, en imaginant et en appropriant des établissements spéciaux pour le soulagement de*

chacune des misères physiques, ont de plus en plus restreint le sens du mot hôpital. Aujourd'hui la théorie ne l'applique qu'aux établissements ou l'on traite des indigents malades. On appelle hospices les institutions qui reçoivent et entretiennent les vieillards, les infirmes incurables, les orphelins et les enfants trouvés. Nos pères ne faisaient pas cette distinction."

33. DICTIONNAIRE DE L'ÉCONOMIE POLITIQUE ETC. *Publié sous la direction de MM. Coquelin et Guillaume. Paris,* 1852. Tome 1er, p. 846.

"HÔPITAUX; HOSPICES.—*Les deux mots que nous plaçons en tête de cet article ont été appliqués autrefois indifféremment, et on leur attribue souvent encore dans la conversation une signification générale, mais le langage administratif moderne les a spécialisés, en comprenant sous le nom d'hôpitaux les seuls établissemens qui reçoivent les malades susceptibles de guérison, et dans celui d'hospices les refuges ouverts à l'enfance, à la vieillesse et aux infirmités incurables. Au surplus ces asiles ont entre eux de nombreuses affinités et peuvent même voir quelquefois réunis dans la même enceinte les divers genres de malheurs qui affligent l'humanité; ils devaient donc être confondus ici dans le même article parce qu'ils appellent le même ordre de considérations.*"

34. DICTIONNAIRE UNIVERSEL DES SCIENCES, DES LETTRES ET DES ARTS. *Par M. N. Bouillet. Paris,* 1854. P. 815.

"HÔPITAUX *et* HOSPICES.—(*Du latin* hospitale *et* hospitium, *lieu affecté à recevoir les hôtes*). *Édifice destiné à secourir les personnes privées de tout moyen de remède à leurs souffrances et à donner à ces personnes les remèdes propres à l'amélioration de leur santé. Hôpital et hospice jadis étaient synonymes: aujourd'hui l'hôpital reçoit les malades ou blessées qui doivent ou peuvent guérir; l'hospice reçoit les incurables, les enfants et les vieillards qui ne peuvent pourvoir à leur existence.*"

35. DE L'ASSISTANCE ET DE L'EXTINCTION DE LA MENDICITÉ. *Par M. Lerat de Magnitot. Paris,* 1856. Pp. 226, 227.

"*Les détails qui précèdent s'appliquent spécialement aux admissions dans les hôpitaux, car dans le langage médical on distingue*

ceux-ci des hospices proprement dits, bien que ces deux mots aient été longtemps synonymes. Aujourd'hui les hôpitaux sont plus particulièrement les établissements destinés à recevoir les malades ou les blessés, tandis que les hospices servent d'asile aux vieillards, aux enfants ou aux incurables incapables de pourvoir à leur existence."

Their Lordships delivered judgment, December 21, 1867.

LORD JUSTICE LORD CAIRNS:

The question in this appeal is the meaning of the following words in the will of the late Lord Henry Seymour:—"*Je donne et lègue tous les objets et valeurs dont je n'ai pas disposé ci-dessus aux Hospices de Paris et de Londres, que j'institue à cet effet pour mes légataires universels.*"

The Master of the Rolls has held that, in the class denoted by the phrase, "*les Hospices de Londres,*" the ordinary London medical and surgical hospitals are not included. The appeal is brought before us on a motion by eight of these hospitals—the London Hospital, and seven others—that their names may be inserted in the first schedule to the certificate. But it was admitted at the bar that the appeal must be taken as an application to vary the following statement in the body of the certificate:—"The Institutions or persons which are, according to the law of France, meant by the word '*hospices*' are such as gratuitously receive within their walls and provide for persons who are unable to take care of themselves either from old age combined with poverty, from infancy combined with neglect, from mental incapacity, or by reason of any bodily ailment which is not susceptible of cure." In other words, the certificate, as it stands, excludes from the meaning of "*hospices*" the idea of an Institution for the treatment of bodily ailments with a view to cure; and in this respect the Appellants contend that the certificate is erroneous.

The question, therefore, which we have to determine is the meaning of a French word used by a resident and domiciled Frenchman in a French will, a question the determination of which cannot but be inconvenient to an English Court. But we must proceed to solve it in the usual way by evidence; evidence external as to the proper and ordinary meaning of the word at the

time it was used, and evidence internal—if there be any—as to the sense in which it was used by this particular testator in his will. Of these two kinds of evidence, I attach by far the greater weight to the second if it be found to exist; but it will be convenient that I should examine in the first place what I have termed the external evidence.

I have only further to premise that I agree with the Master of the Rolls, that the same word being applied in the will both to Paris and to London, it must in each case receive the same interpretation, and consequently that the words "*Hospices de Londres*" must include such Institutions as, if they were situated in Paris, would fall within the description of "*les Hospices de Paris.*"

There are some matters of fact as to the use in the French language of the words "*hospice*" and "*Hospices de Paris*" upon which both sides are agreed, and to these it would be desirable in the first instance to refer. It is admitted, then, that, prior to the French Revolution of 1789, the term "*hospice*" had no application to charitable Institutions for the relief of indigence, or for the relief of disease, whether curable or incurable. In illustration of this, there being no dispute as to the fact, it will be sufficient to look to the meaning of the word given in the four editions of the *Dictionary of the Academy* from 1694 to 1762. I will read the quotations in the English version, except where it may be otherwise necessary. "*Hospice,* s.—A house intended for the retreat of members of a religious order when passing from one convent to another. There is at Lusarches an *hospice* for those of *Picpuce.* It signifies also a house built in a great city for the reception during war or other times of distress of the members of either sex belonging to convents built in the country. The *Hospice* of Lisle. The *Hospice* of Auchin at Tournay. In some places it is called a refuge. It signifies also a small convent dependent upon a larger convent of the same order." At the same time, as appears by the same Dictionary, the word "*hospital*" was used as the most general term to denote an Institution for the reception of either of the sick or indigent. "*Hospital,* s. m.—A house founded and established for the reception of the poor, the sick, and travellers, with the view of their being lodged and entertained by way of charity. *Hospital général.* Hospital for the incurable." It is

further admitted that, at the time of the Revolution, the word "*hôpital*," having become distasteful to the people of France, was superseded by the word "*hospice*," which thenceforward continued, at all events for many years, to express the same idea as had previously been expressed by "hospital," or "*hôpital*, an Institution, namely, for the sick or indigent.

Some out of many examples may be taken of this change. M. Anquetin, in his *Dictionnaire de la Conversation*, referred to by both sides, after describing the cruel treatment of the sick and poor in hospitals immediately before the Revolution, continues thus:—"Up to the Revolution all public asylums open to the sick and to indigent infirm persons were designated by the general name of '*hôpital*'; but this name awakened in the minds of the people the idea of a place so repulsive, of a pity so insulting and cruel that, on obtaining the mastery, it proscribed the word with horror, and substituted for it the name '*hospice*.'" Martin Doisy, in his *Dictionary of Charitable Economy*, says:—"The words '*Hôpital-général*' and '*Hôtel-Dieu*' are used without distinction in the edicts and letters patent of the last two centuries. The word '*hospice*' is more peculiarly a modern word, and was little used before 1789. The word '*hôpital*' designated indiscriminately a place where the sick were cared for and a place of hospitality for the infirm, the aged, children, and paupers. It was peculiarly unpopular at the time of the Revolution of 1789, because Christian charity had specially adopted it, and for this reason the word '*hospice*' was preferred in administrative language."

In the year 1795 the *National Almanac* changed the heading "*Hôpitaux de Paris*" into that of "*Hospices de Paris.*" About the same time the *Hôtel-Dieu* and the *Hôpital de la Charité*, both for the treatment of acute diseases, were changed into the "*Grand Hospice de l'Humanité*" and the "*Hospice de l'Unité.*"

In 1803 the *National Almanac* has the following entry:—"*Civil Hospices of Paris.*—The civil *hospices* of Paris form two distinct classes; one contains the *hospices* for the sick, and the other the *hospices* for the poor." The same *Almanac* for 1804 is even more precise:—"The civil *hospices* of Paris form two distinct classes; the one including the hospitals in which the sick are received, the other the *hospices* in which the indigent are

received. The first are devoted to the relief of suffering humanity, the second serve as an asylum for children, infirm persons, and aged poor."

It is, in the next place, a matter on which there is no controversy, that there was formed in the year 1801, during the Consulate, an "*Administration*" for the government of all the charitable Institutions for the sick and indigent in Paris, and that this was termed, "*L'Administration des Hospices civils*," and continued under that title till the year 1848. Some articles of the law of 1801, establishing this administration, may be usefully referred to. Article 1 is:—"*L'Administration des hospices civils de la commune de Paris sera composée du Conseil général d'administration et d'une commission administrative.*" "*Art.* 5. *Le Conseil général d'administration aura la direction générale des hospices, il fixera le montant des dépenses de tout genre, l'état des recettes, réparations et améliorations, enfin il délibérera sur tout ce qui intéresse le service des dits hospices, leur conservation et la question de leur revenus.*" "7. *Deux membres de la Commission administrative assisteront aux séances du Conseil général; ils pourront y faire les propositions qu'ils croiront utiles au service des hospices.*" "9. *Il sera établi pour le service des hospices un caissier général nommé par le ministre de l'intérieur et qui fournira un cautionnement de* 300,000 *francs.*" In connection with this law there are some passages in the *Moniteur* in 1805 which are interesting, as showing both the general extent of the term "*hospice*" and also the first symptom of the internal or administrative classification of "*hôpitaux*" and "*hospices*"; a classification, however, spoken of as consistent with the continued use of the word "*hospice*" as a generic term. The *Moniteur*, in 1805, page 1254, says, speaking of the law of 1801:—"*Il résulte que le Conseil général a sous sa direction tous les établissemens hospitaliers de la ville de Paris, à l'exception, cependant, des hôpitaux militaires du Val-de-grâce et du Gros-Caillou, des Hospices des Quinze-Vingts et des Sourds-muets. Une des premières occupations du Conseil général fut de classer les hôpitaux et hospices et de donner à chacun une destination particulière. Le nombre des établissemens hospitaliers fut fixé à dix-neuf, onze hôpitaux et huit hospices, dont on va donner le nom et la destination.*" Again, at page 1373, speaking of the *Hôtel-Dieu*,

the *Hôpital de la Charité*, &c., there is this remarkable passage:—"*Les maisons que nous venons d'indiquer sont des hôpitaux, ou, si l'on veut, des hospices où l'on reçoit les malades.*" That is to say, an hospital is an *hospice* where the sick are received for cure.

The next fact with regard to the use of the word "*hospice*" upon which both sides are agreed appears to me to be one of considerable importance in the determination of this case. It is admitted that in the legal phraseology of France, that is to say, in the written laws made during the Republic and downwards, and also in the language of legal writers, the word "*hospice*" came and continued to be used in, and still retains, its largest and most general signification of a place for the relief of indigence and sickness. In illustration of this the following laws may be referred to:—

"August 26, 1795.—Law suspending the Sale of the Property of *Hospices* and other Establishments of Charity.—The National Convention, on the motion of one of its members, decrees that the sale of the property of *hospices* for the aged, for the sick, and for children, of houses of relief, and other establishments of beneficence, shall be suspended until the report which is to be made within ten days by the Committees of Public Relief and of Finance upon the requirement, in consequence of the law of the 23rd Messidor" (July 11).

"October 24, 1795.—Law suspending that of 23rd Messidor, year II. (July 11, 1794), so far as it relates to the Administration and the Collection of the Revenues of Establishments of Charity." "Section 3. The agents of the Commission for the National Revenue shall be bound to forward within the ten days following the publication of the present law, to the administrators of *hospices* and other establishments of beneficence, all title-deeds, inventories, returns of receipts and expenses, leases, and generally all papers relative to the administration of these establishments, except feudal title-deeds which have no relation to property."

"October 7, 1796.—Law preserving Civil *Hospices* in the Enjoyment of their Property and regulating the Mode of their Administration.—Section 1. The municipal administrations shall have the direct superintendence of the civil *hospices* established in their

arrondissement. They shall nominate a commission composed of five citizens, who shall elect one of their number as president, and shall choose a secretary."

"Section 5. Civil *hospices* are preserved in the enjoyment of their property, their rents and income due to them from the public treasury or from individuals."

"November 14, 1796.—*Arrêté* concerning the Superintendence of Civil *Hospices* in Communes where there are several Administrations.—Section 1. Civil *hospices* situated in communes where there are several municipal administrations shall be under the direct superintendence of the central bureaux."

"September 12, 1798.—Law appropriating Funds for the Expenses of Civil *Hospices* and of Children *de la Patrie*." "Section 3. Civil *hospices* shall continue nevertheless to be included in the distribution made every ten days to secure their current service."

"May 1, 1801.—*Arrêté* relating to Payment for Sick Soldiers admitted into Civil *Hospices*.—Section 1. In all civil *hospices* which have not made tenders to the Minister of War which have been accepted, the payment by day for sick soldiers shall be ten centimes above what it was in 1788."

"*Avis* of the Council of State, November 3, 1809.—The Council of State advises—1. That the personal effects brought in by sick persons dying in a *hospice* who have been treated gratuitously ought to belong to the said *hospice*, to the exclusion of their representatives, and of the domain in case of failure of representatives."

Finally, in the *Code civil*, Art. 910, "Dispositions *inter vivos* or by will in favour of *hospices*, of the poor of a commune, or of establishments of public utility, shall not be carried into effect except so far as they shall be authorised by a Royal Ordinance."

Art. 937. "Donations made in favour of *hospices* of the poor of a commune or of establishments of public utility shall be accepted by the administrators of those communes or establishments upon being duly authorised."

Among the legal text writers it will be sufficient to refer to Merlin and Foucard. Merlin, in his *Répertoire de Jurisprudence*, Paris, 1827, fifth edition, writes thus under the word "*hôpital*":—

"*Hôpital*, a house intended to receive the poor and the healthy, and to lodge, nourish, and support them as a matter of charity. Hospitals now bear the name of '*hospices civils*.'" M. Foucard, in his *Éléments du Droit public administratif*, second edition, Paris, 1839, vol. iii. No. 237, page 200, writes as follows:—"We understand by the word '*hospice*' establishments destined to receive the indigent, the sick, foundlings or deserted children, and old persons without the means of livelihood."

Pausing at this stage of the investigation, it is clear that, when the word "*hospice*" was first changed from its original meaning of a conventual appendage, it was used to denote charitable establishments for the sick and indigent in the widest sense; that it is found retaining this use in popular language and writing during the early years of the present century; that the public administration of charitable establishments for the sick and indigent in Paris was during the first half of this century conducted under the general title of "*L'Administration des Hospices*"; and that in the French statute law the large and general meaning, and no more limited meaning, is found attached to the word. Under these circumstances it is, in my opinion, for those who contend that a testator who, in 1858, used in his will the expression, "*les Hospices de Paris*," intended to exclude hospitals for the cure of bodily ailments, to establish this limited meaning of the term either from internal evidence in the will or by clear proof that, during the years preceding the date of the will, the signification of the term "*hospice*" had in ordinary language become curtailed.

Upon this the chief controversy in the case has taken place. The Respondents contend that, from the year 1817 downwards, the meaning of "*hospice*" in ordinary language has become narrowed. And the authorities for this which they refer to have now to be considered. I may state, however, that some obscurity has, as I think, been created by not considering the object which the writers referred to as authorities on this head appear to me to have had in view. In France, as in England, considerable discussion has arisen during the last thirty or forty years as to the economical, statistical, and scientific bearings of charitable and medical relief; as to the propriety of relieving the sick irrespective of the locality of residence, and the impropriety of relieving the indigent irre-

spective of such locality; as to the dietary to be observed in the establishments, as to the expense of each inmate; as to the statistical results in respect of age, sex, deaths, and recoveries. In all these matters scientific and administrative writers soon perceived that, for their purposes, a distinction must be drawn between establishments which receive the sick with a view to treat, cure, and discharge, and establishments which receive the indigent and incurable with a view to shelter. This distinction they have proposed to express for their own purposes by appropriating the term "*hospice*" to an Institution of the latter and "*hôpital*" to an Institution of the former kind. They argue for the propriety of the appropriation of the words; they insist that it ought to be made; and they stipulate that their own and cognate treatises should be read on the assumption that it is made; they protest against the vagueness and generality involved in the use of the word "*hospice*" according to its popular meaning; but these very writers appear to me to be the strongest witnesses that the general and popular meaning of the word against which they are contending, and which they desire, by contrast or by definition, to narrow, did really exist. The narrower definition of the term is an internal one confined to departmental and scientific language, and has never, in my opinion, superseded in popular and legal language the more general meaning of the word.

The first of the authorities cited on this head, taking them in chronological order, is the *Dictionnaire des Sciences médicales*, 1817. "*Hospice*, under its diverse acceptations, *hospice*, *hospitium*, is a vague or rather multivocal term, so to speak, of which the acceptation is as different as can be the condition of those who are received to board and lodge temporarily or to dwell permanently in a house of which they are not the owners. Let us endeavour to clear up this chaos of designations, in which it is very desirable to leave nothing that is equivocal or arbitrary. I would call a *hospice* an establishment of public beneficence in which persons are boarded, lodged, and attended, who, by advanced years, by tender years, by infirmities, or by scanty means, are forced to enter these places, where they are occupied in work proportionate to their strength, which either brings profit to the establishment or some small additional comforts to the workers

themselves. An *hospice* differs essentially from an hospital in this, that the latter ought to be in a manner exclusively reserved for patients immediately in need of medical aid, whereas an *hospice* is destined either for persons in health or for those whose infirmities are chronic, and of such kinds that attempts at cure would be useless and sometimes even dangerous. It is on this ground that we speak of the *Hospice* for Foundlings, the *Hospice* for Incurables."

This is an instance of what I have referred to. The writer is stating what, in his opinion, ought to be, not what is, the meaning of the word "*hospice.*" He admits the largest meaning of the word, and objects to it. Another work of the same year, 1817, the *Journal des Savans*, is referred to. It is unnecessary to read the quotation, the *Dictionnaire des Sciences médicales* of the same year having admitted the general meaning of the word; but, in fact, the *Journal des Savans* does no more than summarise the reports of the *Conseil des Hospices*, which, as we have seen by the *Moniteur* of 1805, had for their own purpose divided the general term "*Hospice,*" from which they derived their title, into two classes, "*Hospices*" and "*Hôpitaux.*" The same observation may be made of the *Plans des Hôpitaux et Hospices civils de la Ville de Paris*, drawn up by order of the *Conseil général de l'Administration* in 1820.

In 1828 we have this statement in the *Encyclopédie moderne*:— "When we speak of establishments in which the sick poor and the aged poor receive asylum and the means of subsistence, it becomes necessary to distinguish hospitals from *hospices.*"

This again is an example of the scientific distinction adopted by a scientific writer for a particular purpose.

Next in order of date we come to the *Dictionary of the Academy* of 1835, which was much relied on by the Respondents. It is somewhat remarkable that the previous edition of the *Dictionary*, published in 1798, had simply repeated the old conventual meaning of "*hospice,*" and had wholly omitted to notice the new meaning which, during the eight years previous, the word had undoubtedly acquired. The edition of 1835 thus defines "*hospice*":—

"HOSPICE, s. m.—*Maison où des religieux donnent l'hospitalité*

aux pélerins, aux voyageurs. L'Hospice du Mont St. Bernard. Il se disait particulièrement d'une petite maison religieuse établie pour recevoir les religieux du même ordre qui voyageaient, et où il n'y avait pas assez de religieux pour faire régulièrement ce service. Il se disait également d'une maison bâtie dans une la compagne. L'Hospice de Lille. L'Hospice d'Auchin à Tournai. Donner l'hospice à quelqu'un. Le recevoir chez soi. Cette phrase a vieillée. Hospice se dit plus ordinairement aujourd'hui de certaines maisons de charité où l'on nourrit des pauvres, des gens hors d'état de gagner leur vie à cause de leur âge ou de leurs infirmités. Les Hospices civils. L'Administration des Hospices. Hospice de la Vieillesse. Hospice des Incurables. Hospice des Enfants-trouvés. Hospice des Aliénés, etc."

The contrast here made by the words "*plus ordinairement aujourd'hui*" is obviously with the ancient conventual meaning. And the object would appear to be rather to give an example than to define the precise extent of the new meaning, for the instances appended—"*Les Hospices civils, L'Administration des Hospices*"—are clearly instances of the use of the word in its most general sense.

The next authority cited was that of De Magnitot, *De l'Assistance et de l'Extinction de la Mendicité.* If the whole quotation is read, it appears to bear strongly against the Respondents. He says:—"The preceding details apply particularly to admissions into '*les hôpitaux*,' for in medical language a distinction is made between them and '*les hospices proprement dits*,' although these two words have long been synonymous. At the present day" [the edition is in 1856] "hospitals are establishments more particularly destined to receive the sick or the injured, while *hospices* serve as asylums for the aged, for children, or for incurables incapable of providing for their livelihood."

The next authority is that of De Gérando, 1839. "Asylums *hospitaliers* divide themselves naturally into two great classes, the one devoted to the treatment of maladies, the other serving as a refuge for aged persons, for infirm persons, for infants, and for various kinds of indigents other than the sick poor. The designations 'hospital' and '*hospice*' were formerly applied indiscriminately to both classes, but they now serve to distinguish

between them. There are also establishments which combine both characters, such as those houses for the insane and the epileptic in which incurables as well as the sick are included." De Gérando appears to have been a member of the *Conseil des Hospices*, and I understand him to be speaking of the departmental distinction which the *Conseil* had found it convenient to make.

We next come to the Circular of the Minister of January 31, 1840, containing rules for the internal service of *hospices* and *hôpitaux;* that is, in these words:—

"*Draft of Rules for the Internal Service of the Hospital or of the Hospice of* ——.

"I shall insist on the importance of keeping to the meaning of the words '*hospice*' and 'hospital' pointed out in this despatch. Although the confusion of these two terms may be a matter of indifference in ordinary language, it is not so in legal language. This distinction has a bearing which you will easily understand. An hospital receives—1. Sick civilians, men, women, and children, affected by acute disease or hurt by accident; 2. Sick soldiers and sailors; 3. Persons having itch; 4. Persons having scurvy; 5. Venereal patients; 6. Lying-in women." "An *hospice* admits—1. Old persons, poor and in health, of both sexes; 2. Incurable poor of both sexes; 3. Poor orphans; 4. Foundlings and abandoned children; 5. Old persons in health or incurables as pensioners."

This, on the face of it, professes to be a distinction arbitrarily created, and to be at variance with ordinary language. In the same year we have the *Encyclopédie des Gens du Monde* thus speaking:—

"*Hospices.*—The words 'hospitals' and '*hospices*' have long been or were long" [it is translated both ways] "synonymous. At the present time the first applies more especially to the institutions founded for the admission of the sick and the wounded, and the second to those which afford an asylum to the aged, to children, or to the incurable incapable of providing for their own subsistence."

The observations already made apply also to this quotation.

Durieu and Roche, in their *Répertoire*, &c., published in 1842, say:—"The establishments subsequently formed were called *maladreries*, leper-houses, hospitals. The first two terms have

disappeared, and the last alone remains. That of *hospice* has since grown up, which specially describes establishments for the infirm, children, and the aged. But in ordinary language and in that of the laws the word *hospice* is used as the generic term, and includes at once establishments for the reception of the sick and those where infirm persons, the aged, and children are admitted."

This again appears to me to be an authority adverse to the Respondents.

The citation from Dalloz, 1842, appears to be merely a repetition of the circular of the minister of 1840.

Nysten, in his *Dictionnaire de Médecine*, 1845, says:—"The hospital ought to receive only those sick persons who are susceptible of cure," insisting on the propriety of the distinction.

The *Annales de la Charité*, 1845, 1846, merely adopt the departmental division of the administration to which I shall have afterwards to refer. The same may be said of the *Formulaire magistral*, which is one of the two authorities cited by the Master of the Rolls. The book is itself merely a formulary of prescriptions, but, in speaking of the dietary of charitable establishments, it professes to adopt for convenience the classification of the Administration.

The treatise of De Melun in 1849 and his *Projet de Loi* of 1850 both define what they mean in using the word "*hospice*," by styling it "*un hospice destiné aux vieillards et infirmes.*"

The *Encyclopédie du dix-neuvième Siècle* (1852) has this passage:—"*Hospital.*—The progress of charitable economy, of administrative science, of public health, and of medicine, in conceiving and appropriating special establishments for the relief of physical misery, has more and more restricted the meaning of the word 'hospital.' Nowadays the theory applies it only to those institutions where they receive the sick poor. We call *hospices* the Institutions which receive and maintain the aged, the infirm, the incurable, the orphan, and foundlings. Our forefathers made not this distinction." The writer is obviously speaking of the scientific theory as to these words.

So also the *Dictionnaire de l'Économie politique*:—"*Hospitals; Hospices.*—Establishments destined for the treatment of diseases, and to serve as asylums to the aged, to children, and to the

infirm. The two words which we place at the head of this article have been indiscriminately applied in former times, and even now, in conversation, a general signification is often attached to them. But modern administrative language has specialised them, by comprising under the name of hospitals only the establishments which receive sick persons susceptible of cure, and under that of *hospices* the asylums open to childhood, to old age, and to incurable infirmities. Furthermore, these asylums have between them numerous affinities; and we may even sometimes see united within their walls various kinds of miseries which afflict humanity. They ought, then, to be treated in the same article, since they call for the same order of consideration."

Napoléon Landais, in his *Dictionnaire* of 1854, gives as one of the meanings of "*hospice*," "*hôpital*"; and the effect of this is not, in my opinion, lessened by his pointing out a difference between the two words when they are used in contrast.

In the *Dictionnaire universelle des Sciences*, 1854, it is said that "*hôpital*" and "*hospice*" were formerly synonymous, and the difference there drawn by the writer is, I think, a difference only existing when the two words are found in contrast.

As to the dictionaries of Boiste, 1857; Bescherelle, 1857, and Poitevin, 1860, the last merely repeats the *Dictionary of the Academy*, and the two former, after giving "*hôpital*" and "*hospice*" as synonymous, say that "*hôpital*" is applied "*plus spécialement*" to the sick. Mr. Spiers, in his 11th edition, 1858—I omit any reference to the editions after the death of the testator—gives "*hôpital*" as the first meaning for "*hospice*."

I come now to the reports of the *Administration de l'Assistance publique*, which has the administration of these charitable institutions in Paris. A passage from their report is one of the two authorities cited by the Master of the Rolls. The Administration received its present style in 1849, having been previously *Le Conseil général des Hospices*. The Master of the Rolls states that, by the law of France, all bequests in favour of charity are brought into one common fund and applied by this Central Board; and that it is not competent for a testator to select a particular hospital or almshouse at Paris, and give a bequest exclusively to that charity; and that, if so given, it belongs to the general fund;

and the persons who administer it apply the proceeds as they think fit. This, I apprehend, is hardly accurate. By the article of the *Code civil* already quoted, a charitable bequest must be authorised by a Royal Ordinance before it takes effect; but, when so authorised, the Administration will apply it either to their general funds or to one or more than one particular institution according as the testator has not or has given it a "*destination spéciale.*"

In the notes prefixed to the report of the Administration for the year 1848, and for other years, there is found the passage cited by the Master of the Rolls, making a clear analytical division for the purpose of the report of the various Institutions under their care, and styling one of those divisions "*Hospices.*" But there is a constantly recurring use throughout the report of the word "*hospice*" as the generic description both of almshouses and hospitals. The report speaks of the "*Domaine des Hospices*"; of the "*Dette de la Ville envers les Hospices*"; of the "*Subvention pour Dépenses des Hospices*"; of the "*Hospices réunis*"; of the properties belonging "*aux Hospices.*" And in the report of 1848, p. 29, there is a table of legacies during the year, distinguishing in one class legacies to the poor, and in another class legacies "*aux hospices*"; and in the latter class are included legacies left "*aux hospices*" generally, legacies left to particular hospitals, and legacies left to the "*Incurables.*" No stronger instance could be given both of the retention by the Administration of the general meaning of the word and of their practice in accordance with that meaning.

I do not wish, after these authorities, to place any undue reliance upon the evidence of witnesses in the case; but it is material to observe that M. Blondel, M. Lacan, Professor Brasseur, and Mr. Spiers, all of them persons well qualified to speak, testify to the general meaning of the word in ordinary French language. And there is no witness who gives evidence in opposition to them.

I should therefore be of opinion that, in the absence of any internal evidence in the will to the contrary, hospitals for the sick in both countries would be included under a bequest "*aux Hospices de Paris et de Londres.*"

Turning now to the words of the will, I find that, in addition to the words of the actual bequest, there is the reversion of a particular legacy given "*à l'Hospice des Lunatics de Londres*," and another "*à l'Hospice des Petits-Ménages.*"

The former of these does not throw light on the question, inasmuch as a lunatic asylum would be included even in the Respondent's construction of the word "*hospices.*" The mention of the Petits-Ménages shows that the testator knew how, when he was minded so to do, to make a bequest with a "*destination spéciale.*"

There occurs, however, a passage in the will which, I cannot help thinking, throws considerable light on the use of the word "*hospices.*" It is in these words:—"I give and bequeath to Mdlle. Sophie Chéneau, on condition that she do not marry, the usufruct during her life of the amount necessary to secure for her an income of ten thousand francs yearly. That sum shall be applied to the purchase of an annuity of the French Government, which shall be inscribed in the name of Mdlle. Sophie Chéneau for the usufruct, and for the capital in reversion in the name of the 'Administration of the *Hospices*' of Paris, to which I make a gift and legacy of the capital in reversion of that sum. If the said lady should think proper to marry, the usufruct which I have just bequeathed to her is to cease of full right from the day of her marriage."

The testator in these words makes a gift to the "*Hospices de Paris,*" and he at the same time shows his acquaintance with the system of their management by directing the inscription of the annuity to be in the name of the "*Administration des Hospices,*" the style of the Central Board up to 1848. It is not, I think, otherwise than right to impute to a testator a general knowledge of the law and regulations governing the body which he thus selects as a recipient of his bounty. In a question on a foreign will reported in the 6th Moore's Indian Appeals, p. 550, the opinion of the Judicial Committee of the Privy Council was thus expressed by the late Lord Justice Turner:—"Primarily, the words of the will are to be considered. They convey the expression of the testator's wishes, but the meaning to be attached to them may be affected by surrounding circumstances, and where

this is the case, those circumstances no doubt must be regarded. Amongst the circumstances thus to be regarded is the law of the country under which the will is made, and where its dispositions are to be carried out. If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator in the dispositions which he has made had regard to that meaning or to that effect unless the language of the will or the surrounding circumstances displace that assumption." (1) There can be no doubt that by the bequest to which I have referred the Administration would under French law be entitled to apply, and would apply, the gift for the benefit of the Institutions for the sick as well as those for the indigent under their charge, and it must, in my opinion, be taken that the testator intended they should do so. And if he thus used the word with respect to Paris, he cannot be supposed to have used it in a different sense as to London.

The same observations apply, though in a less marked manner, to the residuary gift itself. The will of the testator therefore appears to me strongly to confirm, instead of displacing, the conclusion which I have drawn from the examination of the external evidence in the case.

Differing, as I am compelled to do, from the opinion of the Master of the Rolls, I have felt it right, from the great respect which in all cases, and especially on a question like the present, I entertain for his judgment, to express in detail the reasons which have led me to a contrary direction.

I think the certificate must be varied, and must stand as follows:—"The Institutions which are meant by the gift '*aux Hospices de Londres*' are all Institutions in London which receive, by way of charity, within their walls and provide for persons who, by reason of age, or of curable or incurable mental or bodily ailments, stand in need of care, treatment, or charitable assistance." And with this variation the case must go back to Chambers to ascertain what particular Institutions answer this description.

(1) *Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick*, 6 Moore's Ind. App. Cases, 526.

LORD JUSTICE ROLT:

This is an appeal from an order made in the cause by his Lordship the Master of the Rolls, dated November 10, 1866, declining to make any order on two applications for varying the Chief Clerk's certificate, dated June 13, 1866, made by certain London hospitals, except that the said hospitals should pay the Plaintiff and the Defendant and her Majesty's Attorney-General their costs of the said two applications. The appeal motion also renewed before this Court the application for varying the Chief Clerk's certificate so made at the Rolls. The object of the suit is the administration of the estate of Lord Henry Seymour, who died in the year 1859, having left a will dated in the year 1858, with several codicils thereto, containing a disposition of his residuary estate in the words which have been already read. The decree in the cause is dated July 10, 1863, and it directed several inquiries; and a separate certificate in answer to one of the inquiries was made by the Chief Clerk, dated May 12, 1865, finding that Lord Henry Seymour, the testator, at the respective times of making his will and the several testamentary papers in the bill mentioned, and from thence to and at the time of his death resided and was domiciled in France. Amongst the inquiries so directed, and not answered by the separate certificate of May 12, 1865, was one relating to the effect and construction according to the law of France of the testator's residuary bequest, if it should be found that he was domiciled in France; and in prosecuting this inquiry, after it had been found that he was so domiciled, the summons was adjourned into Court, and upon an examination of the evidence up to that time adduced, and upon hearing all parties by their counsel, his Lordship, on November 3, 1865, stated his opinion, that all those Institutions were included in the bequest which gratuitously received within their walls and provided for persons who were unable to take care of themselves either from old age combined with poverty, from infancy combined with neglect, from mental incapacity, or by reason of any bodily ailment not susceptible of cure, and he added that the result of this would be at once to exclude from any interest in the bequest all those Institutions in London which are usually called "hospitals," which are founded

for the reception of sick persons, the inmates of which are discharged alike from the hospital when they are cured or when it is discovered that the disease is lingering and incurable.

No formal order was drawn up upon this Judgment, but the Chief Clerk acted on it, and by his certificate of June 13, 1866, now under review, he reported or certified as follows:—

"The effect, according to the law of France, of the residuary bequest by the said testator to the Paris and London hospitals is to give such bequest, as to the Paris hospitals, to the Institution that is known by the name of '*L'Administration générale de l'Assistance publique*,' and as to the London hospitals, to such institutions as fall within the meaning of the word '*hospices*' next hereafter stated. The Institutions or persons which are according to the law of France meant by the word '*hospices*' are such as gratuitously receive within their walls and provide for persons who are unable to take care of themselves either from old age combined with poverty, from infancy combined with neglect, from mental incapacity, or by reason of any bodily ailment which is not susceptible of cure. The Institutions or persons entitled to the residuary bequest contained in the said will and testamentary papers, or some or one of them, are as follows, namely: in France, the said Institution or Board known by the name of '*L'Administration de l'Assistance publique*,' and in England, the several Institutions or persons whose names are set forth in the first schedule hereto."

The Institutions thus excluded from the benefit of the bequest brought the question of the soundness of the conclusion before the Master of the Rolls on motions or applications to vary the certificate, and on November 10, 1866, his Lordship made the order of that date already stated, by which these applications were refused with costs. It does not appear whether there was any further argument on this occasion, or any consideration of the further evidence adduced after November 3, 1865; but it is admitted by all parties that this subsequent evidence is rightly before us.

The question on the whole evidence properly admissible is what are the Institutions entitled to benefit by the bequest of the residue "*aux Hospices de Paris et de Londres*," and the discussion of the question turns upon what is the meaning to be given to the

word "*hospices*" in this will. The will being in a foreign language, the evidence of persons who understand the language in which it is written is admissible to inform the Court of what is the proper translation of the words into the English language, and evidence has been entered into accordingly. If, upon the translation of the words as offered to the Court by the experts who have been examined, it shall appear that the strict and primary signification of the words is undoubted, and is sensible and capable of application with reference to extrinsic circumstances, then the only question will be whether there is anything in the context which controls this signification. The principles or canons of construction must, I think, be drawn from the French law, and one of the general rules for the interpretation of legacies laid down by Pothier is thus expressed:—

"*Lorsqu'il y a de justes raisons de croire que le testateur a entendu les termes dont il s'est servi dans un autre sens que leur sens naturel, il faut les entendre dans le sens lequel il y a lieu de croire que le testateur les a entendus plutôt que dans leur sens naturel.*" That is in the seventh chapter of his treatise on Wills, 1st section, rule 3.

But it is possible that the words in question may be found to have been, at the time the instrument was penned, uncertain or fluctuating in their meaning, or to have borne diverse meanings, all sensible, and capable of application with reference to extrinsic circumstances. If so, other considerations will arise in addition to a consideration of the context, which, I apprehend, would in that case also have weight, and indeed possibly greater weight, in controlling and settling the construction, than they would in a case where the primary and simple meaning of the words themselves is undoubted. Now I think it is scarcely in dispute, and certainly I think it results from all the evidence, that the word "*hospice*" had originally and until the latter part of the last century a very different meaning in the French language from that which it has since acquired, that it carried with itself the idea of an Institution bearing something of a religious character, of an asylum for pilgrims, or persons connected with some religious order, or persons retiring from the world; and that about the time of the French Revolution, when Institutions of this kind

fell out of favour, the meaning of the word began to fluctuate. The Institutions themselves known by the name of "*hospices*" were then to a great extent suppressed, and for a time there appeared to be nothing to which the word was applicable. During the period immediately preceding the Revolution, it also appears that the word "*hôpital*" was used as a term descriptive of a house for the reception of the poor, of the sick, and of travellers—in short, as a generic word for a house of charity. But those Institutions had been as charities so much abused that, though the Institutions themselves were not amongst those suppressed at the time, the name conveyed so repulsive an idea that it ceased to be applied as it formerly had been, and its meaning also began to fluctuate. The word "*hospice*" was then applied in a new sense, and took the place of the word "*hôpital*" as a generic term for a house of charity. In the illustrations given in the evidence, I think it appears to have been so first used in or about the year 1795. In the *Royal Almanac* for the year 1790, and for several successive years, houses intended for the relief of persons suffering under incurable disease and other permanent infirmities, as well as houses for the medical treatment and cure of ordinary maladies, were included under the heading or description of "*Hôpitaux de Paris.*" But in 1795 this heading or description was changed in the *Almanac* for that year (then called the *National Almanac*) to "*Hospices de Paris,*" and in the year 1803, under the head of "*Administration des Hospices civils et Secours publics de Paris,*" the following words occur: "*Les hospices civils de Paris forment deux classes distinctes; l'une comprend les hospices des malades, l'autre les hospices des indigents*"; clearly showing that the word "*hospice*" was then intended to comprehend and to apply to both classes, whether considered separately or together.

The same use of both words may, I think, also be traced in the legislation of the same period. From 1789 to 1795 the word "*hôpitaux*" is almost exclusively used to describe houses of charity of every description, and in August 1795 we have a law of the National Convention generalising, and, apparently for the first time, the word "*hospice*" by placing "*hospices des vieillards, des malades et des enfans,*" as well as houses of relief and other charitable establishments, in the same category as to the sale of

their property. We have seen that in the same year the word "*hospices*" was first substituted in like manner in the *National Almanac* for the word "*hôpitaux*."

The like use of the word will be found in the *arrêtés* or laws of several subsequent years; and in particular in the laws connected with the early history of the central charitable Administration of Paris. Before the revolution of 1789, there were a variety of particular charitable foundations in Paris having a diversity of régime and administration—some for the treatment and cure of disease, and others for the relief of permanent infirmity. But at that time all or nearly all of them were brought under a central Administration, and from an *arrêté* or decree of the 27th Nivose, an IX (1801), appearing in the *Moniteur* of that year, which is in evidence, we find that the administration was then called "*L'Administration des Hospices civils de la Commune de Paris*"; and from the whole terms of this *arrêté*, to several articles of which my learned brother has referred, I think it is clear that the word "*hospices*" was there used to denote establishments for the treatment and cure of the sick as well as for the relief of permanent want and infirmity.

During this period there is very little, if any, trace of the user of the word "*hospice*" to describe specifically only such establishments as were devoted to the relief of permanent disease. The Appellants and the Respondents in the main agree as to the sense in which the words "*hospices*" and "*hôpitaux*" were from time to time thus received, understood, and adopted in the French language down to the year 1803; and I think it unnecessary to refer to any details of the evidence of that earlier period. But in the year 1804, and subsequently, the two classes of establishments, namely, those for the sick and those for the poor, each frequently received a distinctive name; while the generic name thus existing as applicable to the two classes, where spoken of together, remained for a time at least unchanged. The word "*hospices*" was still used when the whole body of such establishments was referred to; but when it was necessary for any purpose to distinguish those for the sick from those for the poor, the word "*hôpitaux*" was applied to describe the charities for the relief of the sick, and the generic word "*hospices*" was made to do double duty

and specifically to describe the charities for the relief of the poor.

Afterwards, the word "*hôpitaux*" also acquired to some extent a like double meaning, and the two words were also sometimes used as synonymous. But I will at present confine myself to the double use of the word "*hospices.*" In that year the *National Almanac*, under the title, "*Hospices civils de Paris,*" had the following passage:—

"*Les hospices civils de Paris forment deux classes distinctes; l'une comprend les hôpitaux, dans lesquels on reçoit les malades, l'autre les hospices, dans lesquels on reçoit les indigents.*"

It has been seen that the *Almanac* of 1803 had a similar intimation under the same title; the only difference being that in 1803 the word "*hospices*" had been used as appropriate to each class separately, as well as to the two classes combined; while in the *Almanac* of 1804 the word "*hospices,*" which there continues to be used as describing both classes, is also applied specifically to describe one of the classes, and the word "*hôpitaux*" the other. Thus the word "*hospices,*" by a not uncommon infirmity of language, had a double meaning, one of which was limited to one species of its generic and more comprehensive meaning. Instances of a like kind in other languages, and instances of litigation arising from this very circumstance, might easily be produced. In our own legal language, for instance, the word "legacies" in one sense describes a species of testamentary gift distinct from and excluding annuities; and yet both legacies and annuities frequently fall under the general descriptive word "legacies"; and in those cases, I apprehend, the larger meaning prevails, unless the context controls it. It is singular that, in one of the cases on these words, Lord Eldon should be found to say, "The best construction is to give the word" [legacies] "all the operation it will have, unless there is something else in the will to confine it." That is in the case of *Nannock* v. *Horton*, in 7th Vesey, p. 403.

Of course I do not use this as an authority in the construction of the will of a domiciled Frenchman, but it is useful as illustrative of the question we have to deal with here.

Before further discussing the principles of construction applicable to the case, it will be necessary to trace the history of the

words in question—namely, the words "*les Hospices de Paris*"—from the year 1804 to the testator's death in 1859; and I think, for the sake of brevity, it will be useful in the first place to state the general conclusions of fact which I have drawn from the whole of the evidence relating to this period. They are mainly these. First, that, during the whole of this period, the line between establishments for the treatment and cure of disease and those for the relief of permanent distress was gradually more clearly drawn. It was found convenient to keep the two classes of establishments distinct; but still there remained many establishments throughout the whole period that relieved both forms of distress. Secondly, that other words and expressions, such as "*établissemens hospitaliers*," and the like, were gradually, during the same period, in course of substitution for the word "*hospices*" as used in its generic sense—as used for describing generally the whole body of charitable establishments—but that, nevertheless, the word "*hospices*" continued throughout the whole period to be very commonly used for the same purpose. Thirdly, that, for describing the two specific classes of these establishments, the words "*hospices*" and "*hôpitaux*" were gradually increasing in distinctive use throughout the whole period, but that, nevertheless, they have continued throughout the whole period down to the present time to be sometimes used as synonymous, as well with reference to the whole body of such establishments as to the separate and distinct classes of them. Fourthly, that the distinctive use in the early part of this century of the word "*hôpitaux*" to denote establishments for the treatment and cure of disease, and of the word "*hospices*" to denote establishments for the relief of permanent distress, was originally resorted to for the sake of convenience for the medical and general administration of such establishments, and that this specific use of these words was throughout the whole period more generally adopted and known amongst professional persons connected with charities than amongst the public at large. Professional men bear witness to a complaint of the popular use of the word "*hospices*," which did not adequately recognise, in their opinion, the medical and administrative distinctions.

It is difficult, without citations of inordinate length, to refer to the details of the evidence which, in my judgment, establishes

these conclusions. Almost every word of the Appellants' evidence is confirmatory of them. I had proposed to refer to some passages, but I think it is unnecessary, after the instances cited by my learned brother in his Judgment. Therefore I will not quote any part of the Appellants' evidence; but I think a reference to a few passages from the evidence of the Respondents alone may be useful. I will select a few from the following years, 1817, 1829, 1844, 1846, and 1853. In 1817, we have from the *Dictionnaire des Sciences médicales* this passage. After speaking of the *Hospice Beaujon*, and the *Hospice de Madame Necker*, it says:—"These latter are true hospitals. Was the name '*hospices*,' which was given to them in preference, adopted as a matter of fashion, of modesty, or of pretension? This innovation was always an evil. These examples had imitators, the imitations led to much confusion in the value of ideas and in the value of language." Then follows a passage as to the term "*hospices*" being multivocal, which has been already read.

Then, in 1829, we have (and I select very few) this passage from M. Dufour, which is an extract or citation used by M. Dufour in his *Traité général du Droit administratif*. He says that the Circular of January 1829 has these words—this is the Circular from the Government Authorities:—"Whether the sick be or be not domiciled, they ought to be treated either at their domicile or in the nearest hospice. Every sick person can and ought to be admitted in all the *hospices;* and even if the law had not taken care to prescribe it, humanity would impose on charitable administrations an obligation which it is impossible to ignore."

In 1844, M. Dufour, who cited that extract from the Circular of 1829, says:—"We may then say that the principle is that any sick indigent, belonging or not to the town or the commune, ought to be treated in the nearest *hospice*, and that any unfortunate must be assisted without distinction of creed, of country, of opinion." Then he goes on to draw a distinction as to Paris; and it was part of the argument addressed to us that the testator lived in Paris. Throughout France, no doubt, establishments for the reception of both classes, the sick and the indigent, were called "*hospices*"; but in Paris, where it was possible to make a division, the division was made. But it shows the use of the term throughout the whole

of France, and is as pertinent and as useful in assisting in the construction of the word as any other piece of evidence before us.

In the year 1846, we have this statement in the *Dictionnaire national* of M. Bescherelle. After pointing out the administrative difference between "*hôpital*" and "*hospice*," he says:—"There are, however, Institutions having the double character of hospital and hospice which admit indifferently the sick and the infirm."

Then, in 1852, there is this important piece of evidence given by the Respondents from the *Dictionnaire de l'Économie politique*:—"*Hôpitaux; Hospices.*—Establishments destined for the treatment of diseases, and to serve as asylums to the aged, to children, and to the infirm." The two words which he places at the head of this article have been, he says, indiscriminately applied in former times; and even now, in conversation, a general signification is often attached to them. That would appear to me almost to have been a sufficient piece of evidence of the Respondents to have disposed of the matter; but the Judgment of the Master of the Rolls coming to another conclusion makes it necessary to go more fully into the case.

Now the counsel for the Respondents confidently insisted that the Court ought to be governed by the evidence afforded by the dictionaries of the period, and ought substantially to discard whatever might be found inconsistent with them. I cannot adopt this theory. Mankind—the public at large—do not frame their speech on the model of dictionaries as soon as they are published. No doubt, those works afford useful evidence upon the matter in question, but not more than other works of authority, and all must be weighed and taken into account. But it is unnecessary to insist upon this; for the Respondents' own evidence, from the dictionaries on which they mainly rely, leads to the same conclusion as the other evidence in the cause.

Take the further extracts given from the dictionaries of Boiste, Bescherelle, and Poitevin. Boiste has this passage. After describing hospitals as "*maisons pour recevoir, loger, nourrir, traiter les malades, les pauvres, les passants*," he goes to the word "*hospice*," and describes the meaning of it, that it is a "*maison où il y a plusieurs malades*"; that is, he gives to the word "*hospice*" the description and meaning that it is a "*maison où il y a plusieurs*

malades"; but more especially and more expressly there is the distinction to be made, that a "hospital" is more specially destined for the sick, and a "*hospice*" for the aged and infirm; but still it is only a special application of the word.

Bescherelle is to the same effect. After giving the meaning of the two words, he says, "*Hospice s'emploie quelquefois pour hôpital.*"

Poitevin has exactly the same expression—"*quelquefois hôpital*"; that it has sometimes the meaning of the word "hospital"; that they are used as synonymous; not unfrequently though, under the circumstances which have been stated, they have come to acquire specific meanings for medical and administrative purposes.

I am of opinion that, apart from the context, a word or phrase thus circumstanced, especially in a gift to charity, should be allowed to have the widest of the several constructions it admitted of at the time the instrument was framed. I will assume that in a gift to charity in France as in England the intention of the donor as to the specific object of the charity is to prevail. His specific intention, if expressed and capable of execution, is not to be frittered away by appropriating his gift to charity generally, or to any large subdivision of charitable purposes going beyond his specific purpose. But this will not solve the difficulty if the donor has, in describing the specific objects of his bounty, used words having a double meaning, the one comprehensive and the other limited, each alike charitable, and the larger including and covering the less. I am of opinion that in such cases the larger construction should prevail, so as to ensure that no charitable purpose shall be excluded which the testator could by possibility have intended by his language to include. This, I think, would be a sound principle to apply to the construction of a charitable gift in England; and in the absence of any positive law to the contrary, I think it may also well be applied in interpreting a gift to charity in the will of a testator in France. There is nothing in the context of the will which forbids this conclusion; on the contrary, there is much to confirm it. His gift to the "*Hospice des Lunatics de Londres*" is sufficient to show that he had no especial considerations for the asylums for the relief of permanent distress. The treatment and cure of disease is one of the functions of most, if not of all, lunatic asylums; but his mention of the

Administration of the *Hospices de Paris* is, I think, conclusive as to his intention. It is to this Administration, under the name of "*L'Administration générale de l'Assistance publique*," that the French moiety of the bequest would go, as the Chief Clerk finds; and from the examination in the course of the argument of the annual accounts and reports of that Administration, there can be no doubt that this moiety would be applied alike to the relief of permanent want and to the treatment and cure of disease. It must be assumed that the testator knew this. The circumstances which specially lead to this result in Paris may not exist in London; but still it is impossible to hold that, having coupled London and Paris together in the gift by means of a word so flexible as "*hospices*," he intended to benefit one class of Institutions in Paris and another and more limited class by the same word in London.

On the whole, therefore, I cannot adopt the conclusion that Institutions which are founded for the reception of sick persons, the inmates of which are discharged therefrom either when they are cured or when it is discovered that the disease is incurable, should be excluded from this bequest. On the contrary, I am of opinion that the bequest includes all Institutions which receive by way of charity within their walls and provide for persons who by reason of age, or of curable or incurable mental or bodily ailment, stand in need of care, treatment, or charitable assistance; and that the Chief Clerk's certificate as to the principle to be applied be altered in that respect. As to the particular Institutions, that will go back to Chambers to be settled upon the principle thus laid down.

Upon this principle, eighty-five Institutions were admitted to share in the legacy "*aux Hospices de Londres*":—

School for the Indigent Blind.
London Orphan Asylum.
Samaritan Free Hospital for Women and Children.
King's College Hospital.
The Governors and Directors of the Hospital for Poor French Protestants and their Descendants residing in Great Britain.
Homœopathic Hospital.

Hospital for Sick Children.
St. Mark's Hospital, City Road, for Fistula.
The Widows' Home Asylum.
The Jews' Hospital, Lower Norwood.
The Hand-in-Hand Asylum.
The Merchant Seamen's Orphan Asylum.
Royal Asylum of the St. Ann's Society.
The London Hospital.
St. Mary's Hospital.
The Orphan Working School.
Jews' Orphan Asylum.
The President, Vice-President, and Governors of St. George's Hospital.
The Hospital of the Spanish and Portuguese Jews.
Royal London Ophthalmic Hospital.
Central London Ophthalmic Hospital.
The Hospital for Consumption and Diseases of the Chest.
The City Orthopœdic Hospital.
West London Hospital.
The Western General Dispensary.
Queen Charlotte's Lying-in Hospital.
British Orphan Asylum, Slough.
The President, Vice-Presidents, Treasurers, and Governors of the Middlesex Hospital.
The Charing Cross Hospital.
The British Lying-in Hospital for Married Women.
The Small-pox and Vaccination Hospital, Highgate Hill, Upper Holloway.
The City of London Lying-in Hospital, City Road.
The Westminster Hospital.
The Grotto Passage Refuge.
The St. Pancras Industrial School and Refuge.
The Brook Street Refuge.
The Coburg Home.
The Asylum for the Education of the Deaf and Dumb Children of the Poor.
The Royal Orthopœdic Hospital.
North London or University College Hospital.
The Mayor and Commonalty and Citizens of the City of

London, Governors of the Possessions, Revenues, and Goods of the Hospital of Edward, late King of England, the Sixth, of Christ, Bridewell, and St. Thomas the Apostle, as Governors of Bridewell Hospital.

The Mayor and Commonalty and Citizens of the City of London, as Masters, Guardians, and Governors of the House and Hospital called Bethlem, situate without and near to Bishopsgate, in the said City of London, as Governors of Bethlem Hospital, St. George's Fields, Southwark.

St. Giles and St. George's, Bloomsbury, Refuges for Homeless and Destitute Children.

The Royal Free Hospital, Gray's Inn Road.

The London Fever Hospital, Liverpool Road, Islington.

The Mayor and Commonalty and Citizens of the City of London, Governors of St. Thomas's Hospital.

The Corporation of the Asylum for Female Orphans.

The City of London Hospital for Diseases of the Chest.

The Mayor and Commonalty and Citizens of the City of London, Governors of the House of the Poor, commonly called St. Bartholomew's Hospital, near West Smithfield, London, of the foundation of King Henry the Eighth.

The President, Vice-President, and Governors of St. Luke's Hospital.

The British Asylum for Deaf and Dumb Females.

The Treasurer duly elected of the Governors and Guardians of the Hospital for the Maintenance and Education of Exposed and Deserted Young Children, commonly called the Foundling Hospital.

The Caledonian Asylum.

Royal Infirmary for Children and Women, 180 Waterloo Bridge Road, Surrey.

The President, Vice-President, and Governors of the General Lying-in Hospital, York Road, Lambeth.

The Committee of the Poplar Hospital.

Hospital for Women, Soho Square.

The King Edward Ragged Schools and Refuge for Destitute Girls.

The Cancer Hospital, Brompton.

Joel Emanuel's Almshouses.
The Lock Hospital and Asylum.
Metropolitan Free Hospital.
The President and Governors of Guy's Hospital.
Surrey Ophthalmic Hospital.
St. Marylebone Parochial Charity School for Girls.
The Seamen's Hospital Society.
St. Pancras Almshouses.
The German Hospital.
The Royal Westminster Ophthalmic Hospital for the Relief of Indigent Persons afflicted with Diseases of the Eye, Charing Cross.
All Saints Home.
The Great Northern Hospital.
Convent of the Sisters of Nazareth Home of the Aged, Infirm, and Infantine Poor.
The Sisters of Charity, The Convent, Carlisle Place, Westminster.
The Aged Pilgrims' Asylum.
St. Marylebone Almshouses.
The Westminster French Protestant School.
Home for Female Orphans who have lost both Parents.
Fuller's Almshouses, High Street, Hoxton Old Town, founded by Sarah Fuller and Mary Fuller.
Fuller's Almshouses, Gloucester Street, Hoxton, founded by William Fuller.
The National Orthopœdic Hospital.
The Trustees of the Camden Town Almshouses for the Support and Maintenance of Almswomen belonging to the Parish of St. Martin's in the Fields, Westminster.
The London Society for Teaching the Blind to Read.
Clergy Orphan Corporation.
Abraham Lyon Moses' Almshouses,
Michael Yoakley's Charity.

On July 1, 1869, the Master of the Rolls made an order declaring that the real and leasehold estates in England of Lord Henry Seymour did not pass by the will, but came to the Marquis

of Hertford as heir-at-law and the next of kin, and further declaring that the reversion of the annuity of 10,000 francs to Mdlle. Ellen Minchin would on her marriage or death accrue to the Hospitals of Bethlem and St. Luke's jointly, as representing "*cy-près*" the Institution designated by the testator "*L'Hospice des Lunatics de Londres.*"

To return to the administration in France. It has been already stated that, upon the delivery of the Judgment of the Tribunal of First Instance of the Seine of July 31, 1861, appointing M. Desprez *Notaire liquidateur*, he at once commenced proceedings to carry out the Judgment. On December 29, 1865, he drew up a Report entitled "*État des Comptes, Liquidation et Partage de la Succession,*" containing an account of the proceedings up to that date, under eighteen "*Observations,*" with proposals for partition based upon them, which he submitted to the parties. These *Observations* included an inventory of the estate, a list of the liabilities, the title of the universal legatees to a share in the Fagnani succession, the Ordinances and Judgments of the Tribunals of France relative to the succession of the testator, a notice that Mr. Wallace, the executor in England, had given the Court of Chancery there seisin of the questions raised in England by filing the Bill already mentioned, the demands made by legatees for delivery of their legacies, and the manner of payment, where the legacies were admitted, adopted by the *Notaire liquidateur*. This manner of payment calls for one remark. Among the legacies, as already stated, were five legacies of usufruct, amounting to 17,000 francs per annum, given without any disposition having been made by the testator as to the *nue propriété* of the capital necessary to secure them. They were secured by the investment of a capital sum of 380,000 francs in French *Rentes*, inscribed in the register in the name of the *Hospices de Paris et de Londres*, with special mention of the appropriation of the dividends to the respective amounts of usufruct. This capital sum, therefore, will fall in for partition upon the determination of the usufruct.

This Report was necessarily to some degree provisional, for no Judgment had been given at that time in our Courts upon the question whether the real and leasehold property in England

passed under the will, and as by French law an universal legacy comprises all the property immoveable and moveable of the testator, (1) the *Notaire liquidateur* credited the mass for partition with the assumed value of the real and leasehold property here—an entry in the accounts amended later. The Report, however, contained the general principles of administration; which were accepted by the parties, except on four points, and with regard to these M. de la Palme, with the approval of the executors, required the decision of the Tribunal, to which accordingly the *Notaire liquidateur* referred the parties.

The first of these points related to the legacy to Mdlle. Sophie Chéneau. By his wills of June 19, 1856, and June 22, 1858, the testator gave her the usufruct during her life of the amount necessary to secure for her 10,000 francs yearly, and gave the *nue propriété* of this amount to the *Administration des Hospices de Paris.* By a codicil of June 22, 1858, he reduced the usufruct to 2400 francs. By another codicil of October 17, 1858, he revoked the usufruct; and by a codicil of July 19, 1859, he revoked all he had done for Mdlle. Sophie Chéneau. In these three codicils he made no mention of the *nue propriété.* The *Notaire liquidateur* considered that the revocation of the legacy of the usufruct did not carry with it the revocation of the legacy of the *nue propriété* of the amount mentioned in the will of June 19, 1856; and in his scheme took this amount, estimated at 200,000 francs, out of the mass for partition, and placed it to the credit of the *Hospices de Paris.*

The second point related to making provision for certain old servants, twelve in number, of Lord Henry Seymour's household. His testamentary executors, both in France and in England, demanded that this provision should be placed among the liabilities of the succession. They stated that Lord Henry Seymour had in his lifetime given pensions to certain old servants of his mother, the Marchioness of Hertford, as well as to some of his own servants, and had expressed his intention of giving pensions to others; that the omission of any disposition to this effect in

(1) *Code civil*, 1003. "*Le legs universel est la disposition testamentaire par laquelle le testateur donne à une ou plusieurs personnes l'universalité des biens qu'il laissera à son décès.*"

the will was due to his considering these pensions as debts rather than as a matter of beneficence; that he had so treated them by his own acts, and that they, as his friends, fulfilled a duty to the succession in declaring that there was an engagement and formal promise on his part to this effect; and that his succession was bound, as he himself had been, to keep up these pensions, the amounts of which were based on the age and on the importance and length of the services of the parties entitled; and they further demanded that the pensions should be forthwith secured by the special appropriation to them of a revenue in France.

The *Notaire liquidateur* admitted the demand, but in providing for it made a distinction between the *Hospices de Paris* and the *Hospices de Londres*. He held that it was natural and convenient to leave to the *Administration de l'Assistance publique* the care of providing for the moiety due from the *Hospices de Paris*, inasmuch as the organisation of the Administration offered all the facilities and guarantees to be desired for the payment of charges upon the *hospices*, and he proposed so to do; but he considered that the *Hospices de Londres*, from their number, their distance from the place of payment, and their organisation as separate bodies, did not present similar advantages, and accordingly proposed to take a sum of 80,000 francs from their share and invest it in French *Rentes* in the name of the *Hospices de Londres*, with special mention of the appropriation of the dividends to the payment of the moiety of the pensions; and with the understanding that, as each pension was extinguished, the portion of capital securing it would be at their disposal.

The objection of M. de la Palme was substantially to the mode of securing this payment. To the payment itself his objection was formal, that he was incompetent to assent to an act of liberality except under the authority of the Tribunal.

The third point was the mode of securing the maintenance of the favourite horses of the testator in accordance with the disposition set out above. His executors had selected seven horses as his favourite horses, and placed them at Chantilly under the care of his head-groom. The *Notaire liquidateur* proposed, as in the case of the pensions of the old servants, to leave the *Hospices de Paris* to provide for their moiety of the expenses of maintenance

as they arose, and to invest a capital sum of 100,000 francs out of the share of the *Hospices de Londres* in French *Rentes* to meet their moiety, with the understanding that a portion of this capital was to accrue to them as each horse died.

The fourth point was the question whether the *Hospices de Paris* and the *Hospices de Londres* shared by moieties or *per capita*.

The Report was submitted to the Tribunal for homologation, and at the same time a petition was presented by M. de la Palme, praying the Tribunal to amend the Report by declaring, first, that the aforesaid sum of 200,000 francs should be put back into the mass for partition between the two universal legatees; secondly, that, in the absence of a written obligation, the *Hospices de Londres* were not liable to contribute to keep up the pensions of the servants, and that, if they were liable, the pensions should be secured by a capital sum invested in French *Rentes* in the name of the *Hospices de Paris et de Londres;* thirdly, that the maintenance of the favourite horses should be similarly secured; fourthly, that the partition of the succession should be made not by moieties, but by a division into as many parts as there were Institutions in Paris and London entitled to participitate; and, subject to these amendments, to homologate the report, to extend the time of his powers as *Notaire administrateur*, and to authorise him to make payments to the universal legatees.

The Tribunal, in a Judgment delivered August 17, 1867, granted the prayer of the petition in regard to the 200,000 francs; admitted the demand made by the executors on behalf of the old servants, but directed their pensions as well as the maintenance of the favourite horses to be secured in the manner prayed by the petition, and ordered the partition of the legacy by moieties between the *Hospices de Paris* and the *Hospices de Londres*.

The Judgment, after stating that the Tribunal had heard the report of the Judge commissioned to report on the matter, and the counsel for the respective parties, and had deliberated thereon, continued thus:—

"THE TRIBUNAL,

"Considering that, according to an official report (*procès-verbal*) dated December 29, 1865, Desprez, notary of Paris, appointed

thereto by the Tribunal, proceeded to the partition of the succession of Lord Seymour between the *Hospices de Paris* and the *Hospices de Londres*, instituted universal legatees of the said Lord Seymour, deceased at Paris, August 16, 1859;

"That the said De la Palme, in the name of the *Hospices de Londres* and of the testamentary executors, has made four objections to this Scheme of liquidation (*état liquidatif*), which are now to be examined in order:—

"1st. Ought the sum of 200,000 francs with interest thereon from the death of Lord Seymour to be retained on the debit side of the succession, for the whole to be afterwards added to the account of *L'Administration des Hospices de Paris* as a specific legacy?

"Considering that, to support this preliminary deduction in favour of the *Hospices de Paris*, the *Notaire liquidateur* has relied on the several wills of the testator;

"That the proper course is to examine whether the effect of these wills put together, and of the words of the codicil of July 19, 1859, in particular, is not absolutely to revoke the legacy contained in the former dispositions of June 19, 1856, and June 24, 1858;

"Considering, as a matter of law, that the revocation of a legacy need not be made in express terms;

"That, according to the rule rightly interpreted of Article 1036 of the *Code Napoléon*, subsequent dispositions annul such preceding dispositions as have ceased to be the will of the testator; (1)

"Considering that the legislator has not laid down any rule by which to decide if dispositions, where there are more wills than one, are incompatible, and has thereby shown his reliance on the prudence and discrimination of the judges, whose duty it is to uphold and give effect to the will of testators;

"Considering that the intention to revoke is the essential and necessary basis of all revocation;

"Considering, therefore, that a question of fact arises, and that the codicil of July 19, 1859, must be examined to see if Lord Seymour, in revoking the legacy of usufruct contained in the

(1) *Art.* 1036. "*Les testamens postérieurs qui ne révoqueront pas d'une manière expresse les précédens n'annulleront dans ceux-ci que celles des dispositions y contenues qui se trouveront incompatibles avec les nouvelles, ou qui seront contraires.*"

former dispositions in favour of Sophie Chéneau, intended to revoke the legacy of property made to the *Hospices de Paris*, necessary to secure the accomplishment of the bounty of which Sophie Chéneau had been, and had ceased to be, the object;

"Considering that it is clear, on reading the wills of June 19, 1856, and June 22, 1858, that the intention of Lord Seymour was to institute the *Hospices de Paris* and the *Hospices de Londres* his universal legatees with equal rights, as far as possible, and that he did not contemplate any interruption or modification of this equilibrium, except in regard to capital sums to which the obligation was attached of discharging specific legacies in Paris and in London;

"That with this view he has specially inserted in the above-mentioned instruments an annuity of 10,000 francs in favour of a Mdlle. Minchin, the capital of which was to belong to the Hospital *des Lunatics de Londres*, while he has inserted a legacy of usufruct of 12,000 francs to Richard Wallace, and instituted the *Hospice des Petits-Ménages* the beneficiary of the capital;

"Considering that, after providing for the devolution of his property to his universal legatees, Lord Seymour, by a fresh will of June 19, 1856, instituted several particular legatees, and among them Sophie Chéneau, and that the disposition concerning her is as follows:

> "'I give and bequeath to Mademoiselle Sophie Chéneau, on condition that she do not marry, the usufruct during her life of the amount necessary to secure for her an income of ten thousand francs yearly; that sum shall be applied to the purchase of an annuity of the French Government, which shall be inscribed in the name of Mademoiselle Sophie Chéneau for the usufruct, and for the capital in reversion in the name of the *Administration des Hospices de Paris*, to which I make a gift and legacy of the capital in reversion of that sum;'

"Considering that, without doubt, the governing idea in this testamentary clause is that of the legacy of usufruct, which occupies there the first place;

"That there is nothing to lead to the supposition that, in the absence of the bounty which Lord Seymour intended to confer on Sophie Chéneau, he would have thought of adding a specific legacy

of 200,000 francs, free from partition, to one of his universal legatees, who was instituted by the same instrument;

"That the juxtaposition of these two acts of bounty, so far as the second was concerned, only provided a means of execution and a guarantee imposed by the testator for the accomplishment of his intention;

"That the connection between the legacy of usufruct and the legacy of property is found again in the second will of June 22, 1858, where these words occur:

> "'I reduce to two thousand four hundred francs the usufruct which I have by my will left to Mademoiselle Sophie Chéneau, and leave subsisting the same conditions as were imposed on that legacy of usufruct;'

"That these words must have the meaning expressed in the will referred to, that is to say, the usufruct bequeathed June 22, 1858, is the usufruct of the sum necessary to secure an income of 2400 francs to Sophie Chéneau;

"Considering that the views of the testator are brought out fully by this second will, that his intention to reduce the legacy of property at the same time as the legacy of usufruct is beyond doubt; and that, in face of this manifest intention, there is no ground for upholding the legacy of property of 200,000 francs, since this legacy having been created to support the usufruct, the capital necessary must decrease proportionably with the income;

"Considering that, if this be granted, we must follow out the argument, and take into account every indication of the intention of Lord Seymour;

"That, accordingly, when we come to determine the effect to be given to the codicil of 1859, in which Lord Seymour has declared that he annuls all he has done in favour of Sophie Chéneau, we are compelled to decide that the legacy of property had no further reason, in the eyes of the testator, for its existence; that the fact of the motive which had suggested this legacy to Lord Seymour ceasing raises a presumption of its revocation, the more so as it is owing to the will of the testator that the motive has ceased to exist; and that consequently the sum of 200,000 francs ought not to be retained on the debit side of the succession, as representing a specific legacy to the *Hospices de Paris:*

"2ndly. In regard to the pensions to the old servants of Lord Seymour and of the Marchioness of Hertford—

"Considering that, although there is no testamentary disposition relative to these pensions, the habits of the rich families of England and in particular the private usage of the house of Lord Seymour, who kept up pensions to the servants of his mother, sufficiently authorised the *Notaire liquidateur* to include this item among the charges of the succession;

"That, besides, the testamentary executors have not raised any objection on this point:

"3rdly. As to to the distinction made in the Scheme of liquidation in the method of securing the maintenance bequeathed for the favourite horses of the testator—

"Considering that the distinction made in the Scheme of liquidation which consists in imposing upon the *Hospices de Londres* an advance of 100,000 francs to secure their half of the maintenance, and leaving the *Hospices de Paris* to pay the expenses for which they are liable as they arise, cannot be upheld;

"That, being legatees with the same title and subject to the same charges, they ought to bear equally the maintenance bequeathed for the favourite horses of the testator;

"That several horses having died since the testamentary dispositions came into operation, there is ground for deciding that 120,000 francs only should be taken from the assets of the succession, to be invested in French *Rentes*, with special mention of the appropriation of the dividends to keeping up the above maintenance:

"4thly. As to the method of partition of the succession of Lord Seymour between the *Hospices de Paris* and the *Hospices de Londres*—

"Considering that the method adopted by the *Notaire liquidateur*, namely, partition by moieties, is in accordance with the intentions of the testator, and the spirit which has dictated his will;

"That the wish of Lord Seymour evidently was to distribute his fortune in equal shares between the charitable Institutions of Paris and London, whether they were or were not represented by a single and special Administration;

"Considering, in regard to the powers of De la Palme as administrator, that there is ground for extending them as defined by the Judgment of July 31, 1861, until the sub-partition shall have been made among the *hospices* entitled, and until final payment into the hands of the representatives of the legatees of the universal legacy to the *Hospices de Paris et de Londres;*

"That it is advisable to add to these powers the special mandate to continue to keep up the pensions of the old servants, upheld by the present Judgment, to provide for the maintenance of the horses, to recover what may be due to the succession of Lord Seymour from the succession of the Marquis Fagnani, deceased at Milan, to receive the dividends and deal with the capital of the French State *Rentes* to be bought and inscribed in the name of the *Hospices de Paris et de Londres,* until the rights of the universal legatees to the property situated in London shall have been definitively settled;

"Considering that De la Palme demands also rightly authority to pay into the Court of Chancery in England the net residue coming to the *Hospices de Londres,* definitively in his hands, for the said residue to be distributed according to the rights of each of the Institutions of English charity;

"Considering that as far as relates to the powers of administration, there is ground for ordering the provisional execution of the present Judgment:

"With regard to the advance of one million francs asked for by the *Administration de l'Assistance publique*—

"Considering that it having been decided that the succession of Lord Seymour ought to be divided into two equal parts, to be alloted, one to the *Hospices de Paris* and the other to the *Hospices de Londres,* it is just to grant to *L'Assistance publique,* which already, to carry out the wish expressed by the testator, has erected considerable buildings, the advance it asks;

"That, besides, De la Palme *ès noms* has not raised any objection thereto, save in case the succession should be divided *per capita* among the charitable Institutions;

"That it is expedient on this point to order the provisional execution of this Judgment:

"For these motives—

"Orders that the Scheme of liquidation drawn up by Desprez, notary of Paris, be herein amended:

"1. That he has erroneously carried to the debit side a sum of 200,000 francs as a charge in favour of the *Hospices de Paris* on account of the legacy to Sophie Chéneau;

"2. That there is no ground for making a distinction between the *Hospices de Paris* and the *Hospices de Londres* in the method of securing the maintenance of the favourite horses of the testator;

"And orders that a capital of 120,000 francs shall be taken from the mass under partition, to be invested in the purchase in French *Rentes*, and registered, as to the capital, in the name of the *Hospices de Paris et de Londres*, with mention of the special appropriation of the dividends to keeping up the maintenance bequeathed by Lord Seymour;

"3. Affirms the pensions proposed by the *Notaire liquidateur* for the old servants of Lord Seymour and of the Marchioness of Hertford named in the scheme, and orders that the testamentary executors and De la Palme *ès qualité* do proceed to purchase French *Rentes*, registered in the name of the *Hospices de Paris et de Londres*, of which the dividends shall be received by De la Palme, who shall distribute them to the parties entitled;

"Homologates as to the residue the scheme of liquidation to be executed according to its form and tenour." (1)

The Tribunal then extended the time of the powers of De la Palme, added the special mandate above mentioned, authorised him to make payment of the net value accruing to the *Hospices de Londres* in his hands into the Court of Chancery; authorised also the advance of one million francs to *L'Administration de l'Assistance publique;* and ordered the provisional execution of the Judgment on all points.

The Scheme thus amended and homologated has formed the basis of partition. It has been followed by three supplementary Schemes dated respectively July 8, 1869, January 6, 1873, and February 9, 1876, rendered necessary by the amendments

(1) Appendix B.

due to the decision of the Master of the Rolls as to the freehold and leasehold property in England, and the falling in of capital securing certain specific legacies. These Schemes have been accepted by the universal legatees, and homologated by the Tribunal, but they offer no points of legal interest, and it will be enough to state their general results. Before the date of the last, the favourite horses had all died, and the capital invested for their maintenance was divided under that Scheme. The estate still outstanding and remaining for partition, exclusive of funds retained to meet the costs of administration, consists of three parts: the capital invested to secure the pensions of the old servants; the capital invested to secure the annuities, amounting to 17,000 francs yearly; and the share claimed by the universal legatees in the Fagnani succession, in litigation.

The following are the circumstances of this claim.

The Marquis Fagnani, a subject of Lombardy, died at Milan, October 8, 1840. He had made a will dated Milan, February 7, 1838, by which, after giving several specific legacies, he instituted as heir or heirs of the residue of his estate the person or persons who by law would succeed if he had not expressly instituted them his heirs.

His estate consisted of immoveable property in Lombardy and in Tuscany, and of moveable property in both those countries. In the judicial inventory made after his death, as quoted in a Petition by Lord Henry Seymour to the Italian Tribunals, to be mentioned later, this moveable property was valued at about two million Austrian lire.

He left surviving him two sisters, Antoinette, the wife of a certain Count Arese, a Lombard, and Marie, who had married in 1798 the third Marquis of Hertford, and was the mother of the fourth Marquis of Hertford and of the testator in this case. Her husband was living at the opening of the Fagnani succession, but died March 1, 1842.

By the law in force in Lombardy—the *Codice civile generale austriaco*—these two sisters were the legal heirs of their brother; and upon his death both applied to the Civil Tribunal of First Instance of Milan to be admitted to the inheritance under his will,

but the application of the Marchioness of Hertford was opposed by her sister, the Countess Arese. (1) The Tribunal thereupon directed a suit to be commenced, in which the Marchioness of Hertford was made Plaintiff; and accordingly in February 1843 she presented a Petition to the Tribunal, praying for a declaration of her right to succeed to the inheritance of their brother jointly and equally with the Defendant, the Countess Arese.

The Countess Arese pleaded in opposition that the Marchioness of Hertford had become by marriage an English subject, and was by law incapable of succeeding to property in Lombardy in the absence of proof that subjects of Lombardy were capable of succeeding to property in England.

The law relied on in this plea was Article 33 of the *Codice civile generale austriaco*, which ran thus:—

"Foreigners generally have equal rights and civil obligations with natives, unless for the enjoyment of such rights the quality of citizenship is expressly required; besides, it is incumbent upon foreigners who wish to participate in these rights to prove, in doubtful cases, that the State to which they belong treats Austrian citizens with regard to the rights in question as its own." (2)

The mode of proof under this Article was defined by a decree of the Supreme Tribunal of Justice of the States of the Austrian monarchy, which was communicated to the judicial authorities of the Lombard Provinces by Instructions dated August 20, 1817, and June 20, 1819, and styled "Circulars of Appeal." (3) These Circulars of Appeal required a foreigner demanding delivery of an inheritance or succession which had opened in his favour in the States of Austria to produce Letters of reciprocity (*Reversali de observando reciproco*) in the form of a decree, under the hand and seal of a Superior Court of the State to which he belonged, certifying that that State treated Austrian citizens with regard to inheritance or succession as its own.

The Marchioness of Hertford did not produce to the Tribunal,

(1) *Codice civile generale austriaco*, Art. 731, 797, 791. This Code came into force for the German provinces of the Austrian empire in 1811. It was extended to the Lombardo-Venetian Kingdom in 1816. It is now replaced by the Italian Civil Code, which came into operation January 1, 1866. Hence the rights in question fall under the law of this Austrian Code.

(2) Appendix C. (3) Appendix D.

in support of her Petition, a decree of a Superior English Court, but produced instead Opinions given by Sir F. Pollock, then Attorney-General, Sir W. W. Follett, then Solicitor-General, and the Hon. C. E. Law, then Recorder of London, certifying—

First, that by the law of England an Englishwoman married to an alien, whether Austrian or otherwise, was capable of taking and holding real property either devolving upon her by descent or given to her by will, testament, or otherwise, without exceptions, and

Secondly, that by the law of England an alien, whether Austrian or otherwise, was capable of taking and holding personal property in England devolving upon such alien either by intestacy or by will, testament, or otherwise.

The Civil Tribunal of First Instance gave Judgment against the right claimed by the Marchioness of Hertford. The Tribunal held that, by her marriage with an English subject, she had lost the quality of an Austrian subject; that she had not produced the proof of reciprocity on the part of England imperatively required of foreigners by the Circulars of Appeal; that the Circulars actually produced by her, besides being defective in form, showed that foreigners could not succeed to real property in England; and that, as she had not made a subordinate demand to share in the moveables of the inheritance, her claim could not be allowed; but the Tribunal further held that, as the claim then made by her was a claim of joint succession to the whole of the rights and obligations of a deceased person, and as a partial sharing in personal or moveable property solely must spring from a different right, be attended by different incidents, and be governed by different rules, it was equitable to make a reserve as to such partial right in her favour, and accordingly in their Judgment added this reserve: "Saving nevertheless to the Plaintiff to take proceedings if and as of right for a partition in equal shares with the Defendant, the Countess Arese, of the moveables of the inheritance not otherwise disposed of by the testator." ("*Salvo tuttavia all' Attrice di agire se però e come di ragione per condividere in uguale quota colla rea convenuta, Contessa Arese, li beni mobili ereditari non altrimenti disposti del testatore, Marchese Federico Fagnani.*")

From this Judgment both parties appealed to the Tribunal of Appeal of Milan, the Marchioness of Hertford upon the main point decided, and the Countess Arese upon the reserve made in her sister's favour; and on July 28, 1847, the Tribunal of Appeal affirmed the Judgment of the Tribunal below, but without the reserve made by that Tribunal in favour of the Marchioness of Hertford.

The Considerations of the Judgment of the Tribunal of Appeal, which relate to the proof of reciprocity, and more particularly bear upon the present claim of the *Hospices de Paris et de Londres*, were as follows:—

"Considering that the Plaintiff, Marchesa Fagnani, widow of the Marquis of Hertford, as an alien English subject, in the absence of a Treaty between the Austrian Empire and the Kingdom of Great Britain for the relief of their respective subjects from the disabilities of aliens, was bound, in order to entitle her to succeed to the inheritance of the Marquis Federico Fagnani, to prove that reciprocity had been established between the two States in the delivery of inheritances and successions;

"Considering that in the Circulars of appeal of August 20, 1817, and June 20, 1819, the rules have been laid down under which Letters of reciprocity (*Reversali de observando reciproco*) ought to be produced, and that these rules ought invariably to be observed, because they affect not only the rights of subjects but also those of the King and of the State;

"Considering also that the Certificates produced in the cause by the Marchioness of Hertford, instead of the prescribed *Reversali*, do not present in their external form the character intended by the above-mentioned disposition of the law, inasmuch as they were not delivered by a superior judicial magistrate as provided for, and on this account are clothed only with the character of simple affirmations or legal opinions, rather than with that of a solemn instrument delivered by a competent judicial authority;

"Considering that the Certificates produced do not conform to the requirements of the laws in regard to to their intrinsic matter, since they do not contain the essential explicit declaration and assurance that, on the occurrence of similar cases to subjects of the Austrian Monarchy, inheritances and successions opening in

the Kingdom of Great Britain would devolve upon and be delivered to them, and that, without such an assurance, the guarantee of a true and real reciprocity, the only object of the aforesaid legislation, is wanting." (1)

The remaining Considerations completed the arguments upon which the Judgment rested, by pointing out that, in the absence of a *Reversale de observando reciproco* drawn up in the form required by the law, the Marchioness of Hertford was incapable of succeeding to the inheritance of the Marquis Fagnani; and that, as by Austrian law the inheritance comprised the whole of the rights and obligations of the deceased, her incapacity affected her hereditary right generally, and the right could not be admitted in part, and in part rejected. (2)

The Marchioness of Hertford then appealed to the Supreme Tribunal of Verona, and that Tribunal dismissed her appeal on the point on which the Tribunals below were agreed, but upheld the reserve made in her favour by the Civil Tribunal of First Instance.

The Marchioness took no proceedings to establish her rights under this reserve, nor was application ever made by her to the Courts of Tuscany relative to the immoveable property in that country.

During the suit an administrator of all the property both in Lombardy and Tuscany had been appointed; and upon the death of the Countess Arese, her heirs, in 1849, obtained a decree of adjudication of the Fagnani inheritance, subject to the reserve as to the moveables above mentioned, and under this decree received delivery from the administrator of all the property of the succession.

The Marchioness of Hertford died in 1856, and was succeeded in her rights by her two sons, the fourth Marquis of Hertford and Lord Henry Seymour, who, in 1859, presented a new Petition to the Civil Tribunal of First Instance of Milan to obtain the half of the moveable property. Lord Henry Seymour, the testator in this

(1) Appendix E.

(2) *Codice civile generale austriaco*, Art. 531. "*Il complesso de' diritti e degli obblighi di un defunto, in quanto non siano fondati sopra relazioni meramente personali, chiamasi esse ereditario.*"

case, died, as already stated, in 1859, and his rights passed under his will to the *Hospices de Paris et de Londres.*

The proceedings have been revived from time to time as changes have occurred in the families of the two sisters, the original claimants, and are now being actively prosecuted by the *Hospices de Paris et de Londres,* in concert with the representative of the fourth Marquis of Hertford, who died in 1870. The present Petition before the Tribunal was presented in December 1876.

In 1875 proceedings were taken before the Master of the Rolls, Sir G. Jessel, with the view of obtaining a decree of a Superior Court in England declaratory of English law as to succession by foreigners, and, in particular, Austrian subjects, to be produced before the Italian Courts. An administration suit was instituted, *Burton* v. *Wallace,* in which the Plaintiffs were members of the committee of management of St. Marylebone Almshouses, and applied to the Court on behalf of the said Institution and of all other the hospitals of London entitled as residuary legatees under the will of Lord Henry Seymour; and Sir R. Wallace, Bart., and M. de la Palme were made Defendants; and in this suit the Master of the Rolls pronounced the following decree:—

"His Honour doth declare that, according to English law in force before and on the 8th day of October 1840, and continuously since that date in force, foreigners, subjects of Austria or the Kingdom of Italy, being friendly states, and female English subjects, wives of such foreigners (and without regard to the existence or recognition in Austria or the Kingdom of Italy of corresponding rights in English subjects or female Austrian or Italian subjects wives of English subjects), have been and are capable of acquiring and possessing personal estate in England, including all moveables and moneys, credits and securities for money, public or private, devolving upon them by testamentary disposition, intestacy, or otherwise, and would have the same delivered to them in the same way as if they were English subjects, or as if, being English subjects wives of such foreigners, they had married English subjects and not foreigners. And it is declared that, according to English law in force before and on the 8th day of October 1840, and continuously since that date in force, female English subjects wives of foreigners, subjects of

Austria or the Kingdom of Italy, being friendly states, have been and are capable of acquiring and holding real estate in England, including all immoveables devolving upon them by testamentary disposition, intestacy, or otherwise, in the same way as if they had not married such foreigners. And that, according to English law in force before and on the 8th day of October, 1840, and continuously since that date until the 12th day of May 1870 in force, foreigners, subjects of Austria or the Kingdom of Italy, being friendly states, were capable of acquiring by testamentary dispositions, and of holding (until the crown of England should choose to claim and by legal proceedings should establish its claim) real estate in England, including all immoveables, in the same way as English subjects. And that, according to English law in force on the 12th day of May 1870, and continuously since that date in force, foreigners, subjects of Austria or the Kingdom of Italy, being friendly states, have been and are capable of acquiring by testamentary disposition, intestacy, or otherwise, and of holding real estate in England, including all immoveables, in the same way as English subjects, and in all such cases as before mentioned, without regard to the existence or recognition in Austria or the Kingdom of Italy of corresponding rights in English subjects or female Austrian or Italian subjects wives of English subjects. (1) And it is declared that, according to English law in force on the 6th day of August 1844, and continuously since that date in force, any person born out of the British dominions of an English mother by a foreign father (without regard to the existence or recognition in Austria or the Kingdom of Italy of corresponding rights in English subjects) has been and is capable of acquiring by testamentary disposition, or intestacy or purchase, and of holding any real estate in England, including all immoveables; and any personal estate in England, including all moveables and moneys, credits, and securities for money, public or private, in the same way as an English subject." (2)

The Master of the Rolls further ordered that this suit should be deemed to be supplemental to the suit of *Wallace* v. *Her Majesty's Attorney-General.*

This decree has been produced before the Italian Courts as

(1) 33 Vict. c. 14, s. 2. (2) 7 & 8 Vict. c. 66, s. 3.

supplying the proof of reciprocity in regard to personal estate required by the Austrian law in force in Lombardy at the time of the opening of the Fagnani succession in 1841; but no decision has yet been given in the matter.

In conclusion, the universal legatees have already received nearly £120,000 under the will.

The French supplementary Schemes mentioned above contain declarations successively submitted to the Tribunal by the Director of the *Administration de l'Assistance publique*, as to the employment of the share coming to the *Hospices de Paris*. He declared that, in order to fulfil the condition imposed by the testator, that the share in his succession coming to the *Hospices de Paris* should be employed in the acquisition of immoveable property which should be inalienable, and in view of such employment, the *Administration de l'Assistance publique* had purchased from the city of Paris, January 18, 1861, a large piece of land situate on the Quai de Gesvres, formerly Quai Lepelletier, and had built thereon two houses, one opening on the Quai de Gesvres, No. 4, and the other on the Avenue Victoria, No. 3; that these houses had been burnt in part during the events of 1871, and afterwards re-built as before; that they had been made inalienable in accordance with the testamentary dispositions of Lord Seymour, and that out of the moneys received by the Administration under the legacy previous to the date of the last Scheme, February 9, 1876, the sum of 1,300,000 francs had been employed upon the houses.

The eighty-five Institutions constituting the *Hospices de Londres* have received each £682, making a total sum of £57,970.

Solicitors in the Case on Appeal before the Lords Justices:—

For the Joint Appellants: Messrs. *Wilde, Humphry, Wilde, and Berger.*

For the Brompton Consumption Hospital: Messrs. *Baxter, Rose, and Norton.*

For the Respondents: Mr. *W. A. Greatorex.*

For the Plaintiff: Messrs. *Capron, Dalton, and Hitchins.*

For the Defendants: Messrs. *Raven and Bradley.*

[APPENDICES.

APPENDICES.

APPENDIX A.

EXTRACT FROM THE JUDGMENT OF THE FIRST CHAMBER OF THE CIVIL TRIBUNAL OF FIRST INSTANCE OF THE SEINE, DELIVERED JULY 31, 1861.

"LE TRIBUNAL

"*Ouï en leurs conclusions M. Levaux, avoué de M. de la Palme, commis à l'effet de représenter les Hospices de Londres,* * * * *M. des Étangs, avoué de l'Administration de l'Assistance publique, M. Guidon, avoué de l'établissement connu à Londres sous le nom de l'Hôpital des Pauvres Français Protestants;*" * * *

"*Et après en avoir délibéré conformément à la loi:*" * * *

"*Par ces motifs—*

"*Joint les diverses demandes en compte, liquidation et partage de la succession de Lord Henry Seymour;*

"*Ordonne qu'aux requête, poursuite et diligence de M. de la Palme en sa dite qualité il sera, en présence des autres parties ou elles, dûment appelées, procédé devant Desprez, notaire, que le tribunal commet à cet effet aux opérations de compte, liquidation et partage des biens et valeurs dépendant de la dite succession;*

"*Nomme M. Nicolas, juge près ce tribunal, pour faire son rapport sur l'homologation;*" * * *

"*Et, après le partage effectué, dit qu'il y aura lieu de procéder à un sous-partage entre les Hospices de Londres de la part qui sera reconnue leur revenir dans l'émolument du legs universel;*

"*Commet pour le sous-partage le dit Desprez, notaire, et le juge précédemment indiqué;*" * * *

"*Réserve à l'égard de ce sous-partage tous les droits des établissements de Londres qui ne se sont pas encore fait connaître;*

"*Surseoit spécialement à statuer sur les conclusions des parties de Guidon, représentant l'Hôpital des Pauvres Français Protestants et tendant à la mise en demeure des dits établissements qui ne se sont pas encore présentés.*"

APPENDIX B.

"LE TRIBUNAL,

"*Attendu que, suivant procès-verbal à la date du vingt-neuf décembre mil huit cent soixante-cinq, Desprez, notaire à Paris, commis à cet effet par le*

Tribunal, a procédé au partage de la succession de Lord Seymour entre les Hospices de Paris et les Hospices de Londres instituer légataires universels du dit Lord Seymour, décédé à Paris le seize août mil huit cent cinquante-neuf ;

" *Que cet état liquidatif a été, de la part du dit de la Palme au nom des Hospices de Londres et des exécuteurs testamentaires, l'objet de quatre contestations, qui vont être successivement examinées :—*

" 1^ent^. *Y a-t-il lieu de maintenir à la masse passive de la succession la somme de deux cent mille francs, avec les intérêts de cette somme, à partir du décès de Lord Seymour, pour le tout être ensuite ajouté aux droits de l'Administration des Hospices de Paris à titre particulier ?*

" *Attendu que, pour opérer ce prélèvement au profit des Hospices de Paris, le notaire liquidateur s'est fondé sur les divers testaments laissés par le de cujus ;*

" *Qu'il convient de rechercher si les termes de ces testaments rapprochés entre eux, et notamment les expressions du codicille du dix-neuf juillet mil huit cent cinquante-neuf, n'ont pas pour effet la révocation absolue du legs écrit dans les dispositions antérieures des dix-neuf juin mil huit cent cinquante-six et vingt-deux juin mil huit cent cinquante-huit ;*

" *Attendu, en droit que la révocation d'une libéralité à cause de mort n'a pas besoin, pour exister, d'être littéralement exprimée ;*

" *Que, suivant la règle, sainement interprétée de l'article* 1036 *du Code Napoléon, les dispositions postérieures annulent, dans les précédents, celles qui ont cessé d'être la volonté du testateur ;*

" *Qu'en ne traçant aucune règle pour reconnaître s'il y a incompatibilité entre les dispositions de plusieurs testaments, le législateur s'en est reposé sur la prudence et sur l'appréciation des magistrats, dont la mission est de protéger et de faire sortir à effet la volonté des testateurs ;*

" *Attendu que l'intention de révoquer est la base essentielle et indispensable de toute révocation ;*

" *Qu'il y a donc lieu en fait d'interroger le codicille du dix-neuf juillet mil huit cent cinquante-neuf pour savoir si Lord Seymour, en révoquant le legs en usufruit contenu dans des dispositions antérieures au profit de Sophie Chéneau, a entendu révoquer le legs en propriété fait aux Hospices de Paris de la somme nécessaire pour assurer l'accomplissement de la libéralité dont Sophie Chéneau avait été et cessait d'être l'objet ;*

" *Attendu qu'il ressort manifestement de la lecture des testaments des dix-neuf juin mil huit cent cinquante-six et vingt-deux juin mil huit cent cinquante-huit, que la volonté de Lord Seymour a été d'instituer pour ses légataires universels, avec droits égaux autant que possible, les Hospices de Paris et les Hospices de Londres, ne prévoyant une rupture ou modification de cet équilibre que dans la mesure des nues propriétés résultant de l'obligation d'acquitter des legs particuliers d'usufruit, soit à Paris soit à Londres ;*

" Que c'est sous cette impression qu'il a notamment inscrit dans les actes ci-dessus une libéralité viagère de dix mille francs au profit d'une demoiselle Minchin, dont le capital appartiendrait à l'Hôpital des Lunatics de Londres, tandis qu'il inscrit un legs de douze mille francs en usufruit, à recueillir pour Richard Wallace en instituant l'Hospice des Petits-Ménages de Paris bénéficiaire du capital ;

" Attendu, qu'après la dévolution de sa fortune à ses légataires universels, Lord Seymour, par un premier testament du dix-neuf juin mil huit cent cinquante-six, a institué divers légataires particuliers, parmi lesquels Sophie Chéneau, et que la disposition qui concerne cette dernière est ainsi conçue :

" ' Je donne et lègue à Mademoiselle Sophie Chéneau, à condition qu'elle ne se mariera pas, l'usufruit sa vie durant de la somme nécessaire pour lui assurer un revenu de dix mille francs par an ; cette somme sera employée en acquisition d'une rente sur l'État français, immatriculée au nom de Mademoiselle Sophie Chéneau pour l'usufruit et pour la nue propriété au nom de l'Administration des Hospices de Paris, auxquels je fais don et legs de la nue propriété de cette somme ;'

" Attendu qu'il est hors de doute que la pensée dominante, inscrite dans cette clause testamentaire, a été le legs d'usufruit qui y figure au premier rang ;

" Que rien ne saurait faire supposer qu'en l'absence de l'avantage dont Lord Seymour voulait gratifier Sophie Chéneau, il eût songé à ajouter un legs particulier de deux cent mille francs hors part à l'un de ses légataires universels institué par le même acte ;

" Qu'il ne faut voir, dans le rapprochement de ces deux libéralités en regard à la seconde, qu'un mode d'exécution et une garantie imposée par le testateur pour l'accomplissement de sa volonté ;

" Attendu que la liaison entr'eux du legs en usufruit et du legs en propriété se retrouve dans le second testament du vingt-deux juin mil huit cent cinquante-huit, qu'on y lit en effet :

" ' Je réduis à deux mille quatre cents francs l'usufruit que j'ai par mon testament légué à Mademoiselle Sophie Chéneau, en laissant subsister les mêmes conditions imposées à ce legs en usufruit ;'

" Que le sens de ces dernières expressions ne saurait être autre que celui exprimé dans le même testament, c'est-à-dire, que l'usufruit légué le vingt-deux juin mil huit cent cinquante-huit est celui de la somme nécessaire pour assurer un revenu de deux mille quatre cents francs à Sophie Chéneau ;

" Attendu que la pensée du testateur se révèle d'une manière complète par ce second testament, que sa volonté de réduire le legs en propriété en même temps que le legs en usufruit n'est pas douteux ; et qu'en présence de cette volonté manifestée il n'y aurait pas lieu de conserver le legs en pro-

priété pour la somme de deux cent mille francs, puisque ce legs étant créé pour le service de l'usufruit, le capital nécessaire a dû décroître dans la proportion que la rente ;

" *Attendu que, s'il en est ainsi, il faudra dans cet ordre d'idées tenir compte de chaque manifestation de la volonté de Lord Seymour ;*

" *Que dès lors, quand on arrive à interpréter quel doit être l'effet du codicille de mil huit cent cinquante-neuf, dans lequel Lord Seymour a déclaré annuler tout ce qu'il a fait en faveur de Sophie Chéneau, on est forcément amené à décider que le legs en propriété n'avait plus de raison d'être aux yeux du testateur ; que la cessation du motif qui avait dicté ce legs à Lord Seymour fait présumer sa révocation, surtout lorsque c'est par la volonté du testateur que ce motif a cessé d'exister ; que par conséquent il n'y a pas lieu de maintenir à la masse passive de la succession le chiffre de deux cent mille francs représentatif d'un legs particulier à acquitter envers les Hospices de Paris :*

" 2^ème^. *En ce qui touche les pensions à servir aux anciens serviteurs de Lord Seymour et de la Marquise d'Hertford—*

" *Attendu que, bien qu'il n'y ait aucune disposition testamentaire relative à ces pensions, les habitudes des familles riches d'Angleterre et spécialement l'usage particulier de la maison de Lord Seymour, qui servait des rentes aux serviteurs de sa mère, ont suffisamment autorisé le notaire liquidateur à comprendre cet article dans les charges de l'hérédité ;*

" *Que les exécuteurs testamentaires n'ont, au surplus, élevé aucune réclamation de ce chef :*

3^ème^. *Sur la distinction faite à la quatorzième observation de l'état liquidatif sur le mode d'assurer les pensions léguées aux chevaux de prédilection dû de cujus—*

" *Attendu que la distinction inscrite à la quatorzième observation de l'état liquidatif, et consistant à imposer aux Hospices de Londres un prélèvement de cent mille francs pour assurer le service de sa moitié dans la pension dont s'agit, tandis que les Hospices de Paris paieraient au fur et à mesure pour la portion qui leur incombe, ne saurait être conservée ;*

" *Que, légataires au même titre et sujets aux mêmes charges, la portion doit être égale pour l'acquittement de la pension léguée aux chevaux de prédilection du testateur ;*

" *Qu'il y a lieu de décider que, sur l'actif de la succession et jusqu'à concurrence seulement de cent vingt mille francs, plusieurs chevaux étant morts depuis les dispositions testamentaires, il sera prélevé pareille somme destinée à être employée en rentes trois pour cent sur l'État français, avec mention de l'effectation spéciale des avérages au service de la pension ci-dessus :*

4^ème^. *Sur le mode du partage de la succession de Lord Seymour entre les Hospices de Paris et ceux de Londres—*

" Attendu que le mode adopté par le notaire liquidateur, c'est-à-dire, le partage par moitié, est conforme à l'intention du testateur et à l'esprit qui a dicté son testament ;

" Que la volonté manifeste de Lord Seymour a été de distribuer sa fortune, par égales portions, entre les établissements de bienfaisance de Paris et de Londres, qu'ils fussent ou non représentés par une administration unique et spéciale ;

" Attendu relativement aux pouvoirs d'administrateur de De la Palme ;

" Qu'il y a lieu de les lui continuer, tels qu'ils ont été définis par le jugement du trente-un juillet mil huit cent soixante-un, jusqu'à ce qu'il ait été procédé au sous-partage entre les hospices ayant droit et jusqu'au versement définitif aux mains des préposés représentant les légataires du legs universel fait aux Hospices de Paris et de Londres ;

" Qu'il convient d'ajouter à ces pouvoirs le mandat spécial de continuer le service des pensions des anciens serviteurs, maintenues par le présent jugement ; de pourvoir à la pension des chevaux ; de recouvrir ce qui peut revenir à la succession de Lord Seymour dans la succession du Marquis Fagnani, décédé à Milan ; de recevoir les arrérages et toucher le capital de la rente trois pour cent sur l'État français qui doit être achetée et immatriculée au nom des Hospices de Paris et de Londres, jusqu'à ce que les droits des légataires universels sur les biens situés à Londres aient été définitivement consacrés ;

" Attendu que de la Palme demande également et avec droit l'autorisation de verser à la Cour de Chancellerie d'Angleterre le reliquat net revenant aux Hospices de Londres, et qui se trouvera définitivement entre ses mains, pour le dit reliquat être partagé selon les droits de chacun des établissements de bienfaisance anglais ;

" Attendu que, sur ce qui a trait aux pouvoirs d'administration, il y a lieu d'ordonner l'exécution provisoire du présent jugement :

" Sur la provision d'un million, demandée par l'Administration de l'Assistance publique—

" Attendu qu'étant décidé que la succession de Lord Seymour doit se partager en deux portions égales, pour être attribuées l'une aux Hospices de Paris et l'autre aux Hospices de Londres, il est juste d'accorder à l'Assistance publique, qui déjà et pour se conformer au vœu exprimé par le testateur dans l'une de ses dispositions a fait élever des constructions importantes, la provision qu'elle réclame ;

" Que d'ailleurs de la Palme ès noms n'avait élevé d'objection à ce sujet que dans l'éventualité où la succession serait partagée par tête d'établissement hospitalier ;

" Qu'il convient de ce chef d'ordonner l'exécution provisoire de ce jugement :

" Par ces motifs—

" Dit que l'état liquidatif dressé par Desprez sera rectifié en ce sens :

"1^mi^. *Que c'est à tort qu'il a porté à l'article premier de la masse passive une somme de deux cent mille francs, à titre de prélèvement au profit des Hospices de Paris à raison du legs de Sophie Chéneau;*

"2^mi^. *Qu'il n'y a pas lieu de faire une distinction entre les Hospices de Paris et ceux de Londres, sur le mode d'assurer la pension des chevaux de prédilection dû de cujus;*

"*Et ordonne qu'il sera prélevé un capital de cent vingt mille francs, destiné à être employé en achat de rentes trois pour cent sur l'État français, immatriculées pour la nue propriété au nom des Hospices de Paris et de Londres, avec mention de l'affectation spéciale des arrérages au service de la pension léguée par Lord Seymour;*

"*Maintient la pension proposée par le notaire liquidateur au profit des anciens serviteurs de Lord Seymour et de la Marquise d'Hertford, désignés dans le travail liquidatif, et ordonne de ce chef qu'il sera par les soins des exécuteurs testamentaires et de la Palme ès qualité, procédé à l'acquisition d'un titre de rente trois pour cent sur l'État français, immatriculée pour la nue propriété au nom des Hospices de Paris et de Londres, et dont les arrérages seront touchés par de la Palme, qui les distribuera aux ayant droit jusqu'au décès de chacun d'eux;*

"*Homologue, quant au surplus, l'état liquidatif pour être exécuté selon sa forme et teneur.*"

APPENDIX C.

CODICE CIVILE GENERALE AUSTRIACO.

Art. 33. "*Gli stranieri hanno generalmente equali diritti ed obblighi civili coi nazionali, qualora per godere di questi diritti non si richiedesse espressamente la qualità di cittadine; incombe inoltre agli stranieri, per partecipare a questi diritti, di provare ne' casi dubbj che lo stato a cui appertengono tratti i cittadini austriaci riguardo al diritto in questione come i proprj.*"

APPENDIX D.

These Circulars, dated August 20, 1817, and June 20, 1819, are to be found in Vol. I. of the Acts of the Lombard Government, Part I., in the Library of the Court of Appeal of Milan.

APPENDIX E.

EXTRACT FROM THE JUDGMENT OF THE TRIBUNAL OF APPEAL OF MILAN.

"MOTIVI D'APPELLO.

"*Osservato che l' Attrice, Marchesa Fagnani, Vedova del Marchese Hertford, come suddita estera Inglese, in mancanza di un trattato tra l' Impero austriaco ed il Regno della Gran Brettagna, per il quale i respettivi sudditi fossero liberati dal diritto di albinaggio, doveva, per succedere all' eredità del Marchese Federico Fagnani, provare che fra i due Stati si fosse stabilita la reciprocanza per il trasporto dell' eredità e successioni;*

"*Osservato che dalle Circolari d' appello* 20 *agosto* 1817 *e* 20 *giugno* 1819 *sono sanzionate le norme, colle quali si abbiano a rilasciare le reversali* de observando reciproco, *e queste norme devono essere invariabilmente osservate, in quanto che interessano non i soli diritti dei privati, ma quelli del Sovrano e dello Stato;*

"*Osservato che i Certificati prodotti in causa della Marchesa d' Hertford, in luogo della prescritta reversale, non presenterebbero nella loro forma estrinseca caratteri voluti dalle predette disposizioni di legge, dachè non sarebbero rilasciati di un Magistrato giudiziario superiore, com' è prescritto, per cui detti certificati vestirebbero il carattere di privati attestazioni o legali consultationi anzi chè un documento solenne rilasciato di una competente autorità giudiziaria;*

"*Osservato che neppure nell' intrinseca essenza i prodotti Certificati corrisponderebbero alle prescrizioni di legge, perchè difettivi dell' essenziale esplicita dichiarazione ed assicurazione che all' evenienza di consimili casi ai sudditi della Monarchia austriaca sarebbero devolute e rilasciate le eredità e successioni che venissero aperte nel Regno della Gran Brettagna; senza della quale assicurazione mancherebbe la garanzia di una vera e reale reciprocità, che è lo scopo unico voluto dalle predette disposizioni di legge.*"

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CONTENTS.

For Reviews of the Work, see next page.

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK.

From the NAUTICAL MAGAZINE, July, 1875.

"The law-books of the present day are mostly of two classes: the one written for lawyers, and only to be understood by them; the other intended for the use of non-professional readers, and generally in the form of handy books. The first, in the majority of cases, is of some benefit, if looked upon merely as a compilation containing the most recent decisions on the subject; whilst the second only aims, and not always with success, at popularising some particular branch of legal knowledge by the avoidance of technical phraseology.

"It is rarely that we find a book fulfilling the requirements of both classes; full and precise enough for the lawyer, and at the same time intelligible to the non-legal understanding. *Yet the two volumes by Mr. Kay on the law relating to shipmasters and seamen will, we venture to say, be of equal service to the captain, the lawyer, and the Consul, in their respective capacities,* and even of interest to the public generally, written as it is in a clear and interesting style, and treating of a subject of such vast importance as the rights and liabilities and relative duties of all, passengers included, who venture upon the ocean; more than that, we think that any able-seaman might read that chapter on the crew with the certainty of acquiring a clearer notion of his own position on board ship.

"Taking the whole British Empire, the tonnage of sailing and steam vessels registered in the year 1873 was, we learn in the preface, no less than 7,294,230, the number of vessels being 36,825, with crews estimated, inclusive of masters, at 330,849; but the growth of our mercantile fleet to such gigantic proportions is scarcely attributable to any peculiar attention on the part of the Legislature to its safety and welfare, for, as Mr. Kay justly says, 'it is remarkable that in England, the greatest maritime State the world has ever seen, no proper precautions were taken before the year 1850 to protect the public from the appointment of ignorant and untrustworthy men to these important posts'—the command of vessels, 'in which property and life are committed to them under circumstances which necessarily confer almost absolute power and at the same time preclude for long periods the possibility of any supervision.' The French, he tells us, had an ordinance as early as the year 1584, requiring the master to be examined touching his experience, fitness, and capacity. But in England the indifference on this subject was more apparent than real; it arose, we believe, out of the dislike of interference with personal concerns and private enterprise which is so strongly marked in our national character, nor must we forget that some of the most glorious achievements in our nautical annals have been accomplished by men not strictly trained to the sea, and this fact, no doubt, contributed to the reluctance manifested by the Legislature to apply the principles of paternal government to the protection of our seamen; for the going and coming of hundreds of thousands over the ocean for the purposes of business or pleasure had then but lately commenced; and, moreover, probably it was feared that too much care for the welfare of our seamen would have the effect of diminishing the hardihood, self-reliance, and daring which had up to that time made them the envy of the world.

"In 1854 the Merchant Shipping Act was passed, repealing the Act of 1850. Under its provisions the Board of Trade received its present extensive authority over merchant ships and seamen, Local Marine Boards were constituted for the examination of masters and mates of foreign-going and home passenger ships, Mercantile Marine officers established for the registration of seamen, and Naval Courts for the investigation of complaints against masters, and other matters. Without doubt the result of this system of compulsory examination has been beneficial, and the master may also possess those other qualifications which cannot be subjected to examination. But it is not enough now-a-days that he should be honest, skilful, courageous, and firm; he must also, if he would steer clear of rocks other than those marked on the chart, be something of a lawyer. This, it might seem, would apply equally to all men having the conduct of important interests, and coming into contact with large numbers of men, but to no one else is so large a discretionary power granted, and the very fact that his use of it is not very severely scrutinised, only adds to the caution with which it should be exercised. And then there are many incongruities in his position. He may have a share in a ship, and yet he is but the agent of the other owners; though, if he has no share, and in a case of necessity hypothecate the ship, he also binds himself in a penalty to repay the sum borrowed. We can make no charge of redundancy or omission against our author; but if we were called upon to select any one out of the fifteen parts into which the two volumes are divided as being especially valuable, we should not hesitate to choose that numbered three, and entitled 'The Voyage.' There the master will find a succinct and compendious statement of the law respecting his duties, general and particular, with regard to the ship and its freight from the moment when, on taking command, he is bound to look to the seaworthiness of the ship, and to the delivery of her log at the final port of destination. In Part IV. his duties are considered with respect to the cargo, this being a distinct side of his duplicate character, inasmuch as he is agent of the owner of the cargo just as much as the owner of the ship.

"Next in order of position come 'Bills of Lading' and 'Stoppage in Transitu.' We confess that on first perusal we were somewhat surprised to find the subject of the delivery of goods by the master given priority over that of bills of lading; the logical sequence, however, of these matters was evidently sacrificed, and we think with advantage to the author's desire for unity in his above-mentioned chapters on 'The Voyage.' That this is so is evidenced by the fact that after his seventh chapter

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK—*continued.*

on the latter subject he has left a blank chapter with the heading of the former and a reference *ante*. 'The power of the master to bind the owner by his personal contracts,' 'Hypothecation,' and 'The Crew,' form the remainder of the contents of the first volume, of which we should be glad to have made more mention, but it is obviously impossible to criticize in detail a work in which the bare list of cited cases occupies forty-four pages.

"The question of compulsory pilotage is full of difficulties, which are well summed up by Mr. Kay in his note to page 763:—'In the United States no ship is bound to take on board a pilot either going in or coming out of the harbour, but if a pilot offers and is ready, the ship must pay pilotage fees whether he is taken on board or not.' Ships do not exist for pilots, but pilots for ships, so that this option in the use of the pilot, and obligation in the matter of fees, appears to us to be exactly that solution of the difficulty which should not have been arrived at; and, moreover, it is open to the first objection urged by Mr. Kay against the compulsory system of pilotage, which is, that it obliges many ships which do not require pilots to pay for keeping up a staff for those who do. Seven other cogent reasons, for which we must refer the reader to the book itself, though most of them, indeed, will instantly present themselves to the minds of sailors without even an effort of memory, are noted. Section 338 of the Merchant Shipping Act provides that no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of a pilot is compulsory by law. If he interferes to correct the pilot in the handling of a ship, with the peculiarities of which the latter cannot generally be acquainted, he may render himself and the owners liable in case of accident, and so a premium is offered to his indifference, proof being always required that the damage was occasioned solely by the pilot's neglect or fault, to entitle the owners to the benefit of this section. The decision in the case of the *General de Caen* well illustrates some of the difficulties surrounding the subject. She was a French ship upon the Thames, where the employment of a pilot is compulsory, and she, therefore, took on board a pilot as well as a waterman to take the wheel in consequence of none of the crew being able to understand English. The waterman put her helm up instead of luffing as the pilot ordered, whereby a barge was run into and damaged. The French owner claimed under Section 389 of 17 and 18 Vic., c. 104. It was held that the pilot was not answerable for the waterman's incapacity or fault; that the pilot gave the proper orders; that it would be contrary to justice to say that the pilot was solely liable for the collision; that the waterman was the servant of the owners, and that they, therefore, were liable. The real question at issue seems to have been whether the English pilot ought to have spoken French or the French ship to have had on board a helmsman who could understand English, and the corollary, when the decision had been given in favour of the former, that the Government officer, when engaging the helmsman, was acting merely as the agent of the French owners.

"The master has a large authority over the passengers on board his ship, equal in cases of great emergency to that which he possesses over the crew. Lord Ellenborough has decided—it will comfort intending travellers by sea to hear, especially if this country should again become involved in a war with a nation which, unlike Ashanti and Abyssinia, possesses a navy—that a master exceeded the limits of his authority in placing a passenger who refused to fight on the poop, though willing to do so elsewhere, in irons all night on that particular part of the ship to which he had objected.

"It is for the interest and security of commerce and navigation that it should be generally known that the amount of service rendered is not the only or proper test by which the amount of salvage reward is estimated, but the Court will grant to successful salvage an amount which much exceeds a mere remuneration for work and labour in order that the salvors should be encouraged to run the risk of such enterprises and go promptly to the succour of lives or vessels in distress, though they must take care that they do not by their subsequent conduct forfeit their claims to such reward.

"That it should be necessary to entice men by money to save the lives of their fellow-creatures is not a matter for congratulation; still it was no doubt to some extent anomalous that formerly, whilst large proportionate sums were paid for the recovery of property, for the rescuing of human life unless associated with property, no salvage reward could be recovered. But by Section 458 of the Merchant Shipping Act the preservation of human life is made a distinct ground of salvage reward, with priority over all other claims for salvage where the property is insufficient, and if the value of the property is not adequate to the payment of the claim for life-salvage alone, the Board of Trade is empowered to award to the salvors such sum as it deems fit, either in part or whole satisfaction.

"There is, perhaps, no species of service liable to a greater variety of circumstances under which it can be performed than salvage. Consequently we cannot be surprised that questions of this kind frequently come before the Courts, and that the number of decided cases is very large; but Mr. Kay has succeeded in an admirable way in extracting the main points connected with each case, and in presenting them in as few words as possible. Of course fuller information may sometimes be required, but the reader will then know where to find it.

"In conclusion, we can heartily congratulate Mr. Kay upon his success. His work everywhere bears traces of a solicitude to avoid anything like an obtrusive display of his own powers at the expense of the solid matter pertaining to the subject, whilst those observations which he permits himself to make are always of importance and to the point; and in face of the legislation which must soon take place, whether beneficially or otherwise, we think his book, looking at it in other than a professional light, could scarcely have made its appearance at a more opportune moment."

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK—*continued.*

From the LIVERPOOL JOURNAL OF COMMERCE.

"'The Law relating to Shipmasters and Seamen —such is the title of a voluminous and important work which has just been issued by Messrs. Stevens and Haynes, the eminent law publishers, of London. The author is Mr. Joseph Kay, Q.C., and while treating generally of the law relating to shipmasters and seamen, he refers more particularly to their appointment, duties, rights, liabilities, and remedies. It consists of two large volumes, the text occupying nearly twelve hundred pages, and the value of the work being enhanced by copious appendices and index, and by the quotation of a mass of authorities. . . . In a short note of dedication Mr. Kay observes that he had been engaged on it for the last ten years. The result of this assiduity and care has been the production of a standard work on the subject to which it relates. . . . As to the value of the work itself, it can hardly be properly treated of in limited space. It is divided into fifteen parts which have reference to the public authorities having control in shipping matters, the appointment, certificates, &c., of the master, his duties on the voyage, his duties and powers with respect to the cargo, bills of lading, stoppage *in transitu*, personal contracts binding the shipowner, hypothecation, the crew, pilots, passengers, collisions, salvage, the master's remedies and his liabilities. From this range of topics it will be seen that *the work must be an invaluable one to the shipowner, shipmaster, or consul* at a foreign port. The language is clear and simple, while the legal standing of the author is a sufficient guarantee that he writes with the requisite authority, and that the cases quoted by him are decisive as regards the points on which he touches. The work is excellently 'got up,' and its appearance is quite consistent with its standard character as a treatise on the law relating to shipmasters and seamen."

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From the LAW JOURNAL.

"The author tells us that for ten years he has been engaged upon it. . . . Two large volumes containing 1181 pages of text, 81 pages of appendices, 98 pages of index, and upwards of 1800 cited cases, attest the magnitude of the work designed and accomplished by Mr. Kay.

"The total merchant shipping of the United Kingdom consisted in 1873 of 21,581 vessels of 5,748,097 tons, manned by 202,239 seamen; and the total merchant shipping of the whole British Empire consisted of 36,825 vessels of 7,294,230 tons, manned by 330,849 seamen. Mr. Kay justly observes upon these figures: 'For such a vast mercantile fleet, one would have thought that every thing would have been done to render the law affecting such a vital part of our Imperial Empire as clear, as simple, and as easily to be inquired into and understood, as was possible.' Unfortunately, everyone knows that the exact contrary is the case, and that, confused as is the condition of almost every department of English jurisprudence, no one department is in a more hopeless and chaotic state than that which embraces the merchant-shipping laws and regulations. Mr. Kay tells us that these laws are to be discovered by researches into 'thirty-five statutes, seventeen orders in council, great numbers of instructions of the Board of Trade; great numbers of bye-laws and regulations of the Trinity House and of the different ports; and great numbers of cases decided on numberless points in the various courts.' Now, in default of a code setting forth in a clear and comprehensive manner the law contained in this *rudis indigestaque moles*, and until such a code is formed, the only anchor of salvation to mariners and lawyers alike is some one or more treatises on which reliance can be placed. Mr. Kay says that he has 'endeavoured to compile a guide and reference book for masters, ship agents, and consuls.' He has been so modest as not to add lawyers to the list of his pupils; but *his work will, we think, be welcomed by lawyers who have to do with shipping transactions, almost as cordially as it undoubtedly will be by those who occupy their business in the great waters.*

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK—*continued.*

"We must not be understood as intimating that all and every part of this work has a legal interest. Much of it concerns only the practical life of the master and crew. But there are many chapters to which members of both branches of the profession, and especially solicitors residing at the great ports, will turn with gratitude to the author in moments of difficulty. For example, Part IV. is on the master's duties and powers with respect to the cargo, and deals with hypothecation, freight, lien, and delivery. Part V. contains an exhaustive treatise on bills of lading, with special reference to the effect of the transfer of the bill of lading upon the property named in the bill. Part VI. explains fully the right of stoppage *in transitu*, and Part VII. teaches when the master may bind the shipowner by the master's personal acts. So again Part XIII. deals with the principles of salvage, and the nature and reward of salvage services. The great bulk of the book, however, is devoted to the consideration of the rights, duties, and obligations of the master and of the crew. After explaining the powers and prerogatives of the several public authorities to whose control mariners are subject, the author proceeds to the appointment, certificates, &c. of the master, his general duties and authorities on the voyage towards the shipowner, the charterer, the underwriter, and the harbour master. Next are considered the duties and powers of the master with respect to the cargo, his power to bind the shipowner by contracts either for necessary supplies or for absolute sale of the ship, and his power of hypothecation. Having so considered the position of the master, the author next deals with the crew, their engagement, wages, legal rights to wages, and modes of recovery; their discipline, and the legislation for their protection in life, limb, and pocket. Pilots and pilotage are then considered at great length; and then we have a survey of the rights and liabilities of passengers, and the statutable provisions for their protection. Collisions, salvage, the master's personal remedies and liabilities, complete the list of subjects. The appendices contain an immense variety of forms, tables, scales, &c., embracing fees, medicines, boats, protests, bottomry, and *respondentia* bonds, orders in council, instructions to emigration officers, lights, bye-laws as to pilots, remuneration of receivers, and other matters and things too numerous for detail.

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